2015

Campaigning for Judicial Office, 2012

Robert J. Zuercher
University of Kentucky, bzuercher@gmail.com

STUDENT AGREEMENT:

I represent that my thesis or dissertation and abstract are my original work. Proper attribution has been given to all outside sources. I understand that I am solely responsible for obtaining any needed copyright permissions. I have obtained needed written permission statement(s) from the owner(s) of each third-party copyrighted matter to be included in my work, allowing electronic distribution (if such use is not permitted by the fair use doctrine) which will be submitted to UKnowledge as Additional File.

I hereby grant to The University of Kentucky and its agents the irrevocable, non-exclusive, and royalty-free license to archive and make accessible my work in whole or in part in all forms of media, now or hereafter known. I agree that the document mentioned above may be made available immediately for worldwide access unless an embargo applies.

I retain all other ownership rights to the copyright of my work. I also retain the right to use in future works (such as articles or books) all or part of my work. I understand that I am free to register the copyright to my work.

REVIEW, APPROVAL AND ACCEPTANCE

The document mentioned above has been reviewed and accepted by the student's advisor, on behalf of the advisory committee, and by the Director of Graduate Studies (DGS), on behalf of the program; we verify that this is the final, approved version of the student's thesis including all changes required by the advisory committee. The undersigned agree to abide by the statements above.

Robert J. Zuercher, Student

Dr. James K. Hertog, Major Professor

Dr. Bobi Ivanov, Director of Graduate Studies

CAMPAIGNING FOR JUDICIAL OFFICE, 2012

DISSERTATION

A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy in the
College of Communication and Information
at the University of Kentucky

By
Robert J. Zuercher

Lexington, Kentucky

Director: Dr. James K. Hertog, Associate Professor in the School of Journalism and Telecommunications

Lexington, Kentucky

2015

ABSTRACT OF DISSERTATION

CAMPAIGNING FOR JUDICIAL OFFICE, 2012

Concerns over the way in which judicial campaigns are conducted have been voiced since the 1970s. Judicial elections are thought to have become rough and tumble contests, featuring increasing campaign expenditures and controversial campaign speech. With the widespread deregulation of judicial candidate campaign speech in the early 2000s, scholars have become increasingly concerned with how judicial candidates campaign. This dissertation examines the role of the media in judicial elections, campaign communication methods used by candidates, how candidates develop campaign messages, controversial campaign speech, the consequences of campaigning, and candidates' attitudes toward judicial selection reform. Data gathered from a survey of judicial candidates who ran for election in 2012 (n=490) and follow-up interviews with candidates (n=35) were used to address the research questions posed by this investigation. Findings reveal a number of areas of concern with judicial elections beyond campaign speech, including lack of media coverage, lack of access to adequate communication channels, and concerns over external group involvement in judicial elections. Controversial speech is rare in judicial campaigns and few candidates favor strong speech regulations, which are viewed as barriers between the office and the public.

KEYWORDS: Campaign Communications, Campaign Speech, Judicial Campaigns, Judicial Candidates, Media Coverage

Robert J. Zuercher
Student's Signature

January 23, 2015
Date

CAMPAIGNING FOR JUDICIAL OFFICE, 2012

By

Robert J. Zuercher

Dr. James K. Hertog
Director of Dissertation

Dr. Bobi Ivanov
Director of Graduate Studies

January 23, 2015

To the Candidates

ACKNOWLEDGEMENTS

This dissertation would not have been possible without the support from a number of individuals. I would like to thank my dissertation advisor and director, Dr. James K. Hertog, who challenged me to push myself further than I thought possible. I would also like to thank the members of my committee, Dr. Thomas R. Lindlof, Dr. Deborah Chung, and Dr. Patrick Mooney for their encouragement, and guidance throughout the project.

I would also like to thank Scott Johnson, the Director of Research and Instructional Technology in the Department of Communication, and his team of developers for their help with conducting the online survey. I would also like to thank June Horn, the Assistant to the Director in the School of Journalism and Telecommunications, for all of her help with securing the items I needed to conduct the mail survey. I also extend my gratitude to Dr. Mike Farrell and the Scripps Howard First Amendment Center for their generous financial support for this study. Without such support, this project could not have happened.

In addition, I would like to thank the candidates who participated in the study. Their responses and insights allowed me to create an informative work that will hopefully open the door to further studies.

Lastly, I would like to thank my partner, Dr. Nikos Pappas, for his support throughout this project. I could not have finished this work without you.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

Chapter One

Introduction

"You are what you wear … don't wear loafers. People will think, 'Hey, there's a loafer'," "Candidates would do well … [to] pattern their appearances after Jack Lord, star of the television series 'Hawaii Five-O'," and "Be wary of the 'influence-peddling' image of cigars" were all campaign suggestions discussion at the 26th annual Illinois Judicial Conference in 1979 ("Illinois judges given campaigning tips," 1979). It is no wonder that judicial elections were once described as being "quiet, dignified affairs," marked by little media coverage and low voter turnout rates (Streb, 2007b). Up until the late 1970s and early 1980s, campaigns for judicial offices were indeed quite boring (with some notable exceptions from time to time).

Since the late 1970s, judicial elections have been transformed into expensive, professionalized campaigns featuring campaign messages more typical for legislative and executive campaigns. The majority of judges report that the trend in judicial elections is toward "rough and tumble" contests in which candidates are under intense pressure to raise money to support media-driven campaigns (Rottman, 2002). Advice given to judges now focuses on how to address issue questionnaires and how to navigate seemingly ever-loosening campaign regulations (Reed, 2005). Judicial elections, which had been described as about as "exciting as watching a game of checkers played by mail" (Bayne, 2000) are now characterized as being "noisier, nastier, and costlier" (Schotland, 1985, p. 76).

Contemporary judicial campaigns are cause for concern for two primary reasons: campaign speech and campaign financing, both of which may undermine the impartiality

of the courts and weaken the legitimacy of the judiciary. Although judicial campaigns were once strictly regulated, the U.S. Supreme Court's ruling in *Republican Party of Minnesota v. White* paved the way for greater deregulation efforts targeting campaign speech. Now, a judicial candidate can freely label himself as "pro-life" or "pro-choice" and engage in other campaign speech that calls into question the impartiality of the judiciary.

This recent development is directly tied to the ongoing concern with how judicial candidates finance their campaigns. Candidates frequently receive contributions from lawyers and other parties who may appear before the court, begging the question, "Is justice for sale?" This subject has received substantial attention from organizations, such as the American Bar Association and the Justice at Stake Campaign, as well as in popular culture, as in Bill Moyers' documentary, "Justice for Sale," and John Grisham's 2008 fictional work, "The Appeal."

In the 2009-2010 election cycle, judicial candidates for state high courts raised a total of $38.4 million, nearly half (43.8%) of which was spent on television advertising (Skaggs, Silva, Casey, & C. Hall, 2011). In 2012, over $29.7 million was spent on TV ads in judicial elections, more than any other single year (Bannon, Velasco, Casey, & Reagan, 2012). Given these trends in judicial elections, one wonders if future generations will observe a difference between the judiciary and the other branches of government or if the judiciary will fall victim to politicization. Should the public lose faith in the judiciary, according to Justice Sandra Day O'Connor, the rule of law, the basis of a functional government, will be undermined (Sample, Skaggs, Blitzer, & Casey, 2010). Despite the great focus on judicial selection, as well as the judiciary in general, scholarly

research focused on judicial campaigns is lacking in a time when large-scale changes threaten the legitimacy of this political institution. This investigation seeks to shed more light on one important facet of the politics of the judiciary--judicial campaigns. What follows is an overview of this timely and important research project.

Overview

Chapter Two addresses the popular systems that states use to select their judges (appointment, elective systems, and merit selection). These systems reflect differing conceptualizations of the role of the judiciary and attempt to strike a balance between judicial independence and democratic accountability, both of which are key to the institutional legitimacy of the judiciary. Judicial selection has been the subject of an ongoing debate among legal scholars, and the last century has seen continuing controversy over judicial elections. Though a number of activists have called for reform and several states have seen referenda aimed at doing away with the election of judges, the overwhelming majority of state judges are chosen by the ballot rather than appointed as their federal counterparts are.

Chapter Three examines the nature of "new-style" judicial campaigns, which are marked by an increased importance placed on paid campaign advertisements, contentious campaign communications, greater involvement on behalf of non-candidate groups (including political parties and interest groups), and escalating campaign expenditures.

As the chapter details, few judicial candidates receive coverage from the news media. Judicial candidates must therefore depend more heavily upon paid campaign promotional communications including advertisements, to reach the electorate. Challengers and those in multi-county elections, especially, rely on paid advertising.

Although costly campaigns are nothing new for legislative and executive candidates, they pose unique problems for the judiciary, as judicial candidates must frequently turn for financial support to campaign contributors, many of whom are likely to come before the court after the election (e.g., lawyers, businesses, organizations, unions, etc.), bringing into question whether a judge can truly remain impartial in such circumstances.

Along with the concerns raised by professionalized, high-cost judicial campaigns, the changes in campaign messages over the past decade have sounded alarms among the legal community. Judicial campaign speech regulations, although designed to promote the appearance of impartiality, have largely been nullified as a result of *Republican Party of Minnesota v. White* (2002). The trend toward deregulation has left many speculating whether judicial campaigns will increasingly resemble campaigns for legislative or executive office. The main concern of critics is that as judicial campaigns become similar to campaigns for executive or legislative offices and the distinction of this branch of government will be erased, thereby undermining the public's confidence in an impartial court system.

Given the nature of new-style judicial campaigns, qualified candidates may refrain from running for judicial office in order to avoid such bitter contests. Should a significant number of qualified candidates respond in this way, democratic accountability, theoretically maximized under elective systems, would be diminished. Scholars and legal organizations have offered a number of campaign reform proposals over the years (e.g., public financing, voter guides, campaign oversight committees, etc.), but few have gained traction. As this chapter shows, more empirical research is needed to further our understanding of judicial campaigns and elections.

Chapter Four describes the methods used to address the research questions developed in Chapter Three. The chapter includes a discussion of the strengths and weaknesses of two methods chosen to generate data concerning the questions—an online and hard copy survey of 490 candidates for a variety of judicial positions in 2012 and depth interviews conducted with 35 candidates. Specifics regarding the survey, including questionnaire design, item wording and distribution methods are presented. A discussion of the considerations guiding the choice of candidates for depth interviews and the topics for exploration is also provided.

Chapter Five presents the results of the survey and provides analysis of the data gathered from the follow-up interviews.

Chapter Six further discusses the results of the study in the broader context of judicial campaigns.

Chapter Two

Judicial Selection Systems

Unlike most nations, in the United States the great majority of judicial posts are filled via electoral competition. While federal judges are appointed to the bench (as stipulated by the US Constitution), states are free to select judges in the manner in which they see fit, and most choose to do so via election to office. Even so, a wide variety of methods of judicial selection characterizes the choices states have made. Well over 15 different varieties of judicial selection systems, ranging from partisan elections to legislative appointment have been chosen across the 50 states (Schotland, 2007). These different systems demonstrate each state's attempt to balance judicial independence and democratic accountability, both of which are crucial to maintaining institutional legitimacy and preserving the rule of law. This chapter discusses (a) the major issues with judicial selection, (b) the three general methods of judicial selection used by states, and (c) how well judicial independence and democratic accountability are maintained within these selection systems.

Institutional Legitimacy

How states choose to select their judges impacts not only the public's support or trust in the judiciary (and thereby its legitimacy), which in turn affects the operation of the rule of law – one of the "most fundamental of requirements for government" (Benesh, 2006, p. 697). To function, the court system requires public support, which is predicated upon public trust (Benesh, 2006). If the public loses faith in the court system, citizens may be less willing to participate in the system (both as juror and as litigant) (Roberts & Stalans, 1997) or to follow the rulings issued by the courts (Tyler, 1990; Tyler &

Rasinski, 1991). Disobedience and avoidance of legal obligations increase in line with the public's declining respect for the law. Greater governmental force becomes necessary, but reliance on coercive power is resource-intensive and inefficient (Barnhizer, 2001). Legitimate institutions can gain authority from the public in a more effective manner, ensuring a stable society (Tyler, 2006).

According to Gibson (2008b), political capital is necessary for political institutions to be effective, to have their decisions (e.g., rulings, laws, etc.) accepted by the public, and to be successful in implementation. As courts control neither the purse (i.e., the treasury) nor the sword (i.e., agents of state coercion, such as the military and police), they must instead generate authority through institutional legitimacy. The courts rely on the public's perception that the judiciary is a legitimate institution whose decisions should be followed because they are "right."

Legitimacy is a normative concept, rooted in the legal/moral right to make decisions. Specifically, legitimacy is "the belief that authorities, institutions, and social arrangements are appropriate, proper, and just" (Tyler, 2006, p. 376). Legitimate institutions are "those with a widely accepted mandate to render judgments for a political community" (Gibson, 2008b, p. 61). Decisions from institutions perceived as legitimate are more likely to be accepted, ideally making institutions stable and effective to the benefit of all members of society (Tyler, 2006).

Citizens do not inherently perceive the courts as separate from the other branches of government. The judiciary gains legitimacy the more it appears to the public to be distinct from other political institutions. Whereas other institutions serve various interests (the official's self-interest or the public's), the judiciary is designed to be insulated and

impartial. Legitimizing judicial symbols (e.g., impartiality and insulation from political pressure) help citizens distinguish the courts from other institutions and create the appearance that the courts are indeed distinct and therefore "worthy of more respect, deference, and obedience" (Gibson, 2008b, p. 61).

How states choose to select judges has an impact on the public's faith in the judiciary as selection systems inherently favor either judicial independence or democratic accountability. Those who value democratic accountability will not be satisfied with appointive systems; those who value judicial independence will dismiss elective systems. Consistent with Schotland (1985), the only agreement we can reach is that no system can accommodate both goals entirely.

Three General Judicial Selection Systems

In *New State Ice Co. v. Liebmann*, Justice Louis Brandeis described the states as "laboratories" of democracy. The states certainly are fulfilling their role as sites for experimentation when it comes to judicial selection. Three broad selection systems have developed over the history of the United States: appointive systems, elective systems, and merit selection (otherwise known as the Missouri Plan or the merit plan).

Appointive systems. Traditionally, state judges were selected through appointment by state legislatures with or without executive confirmation. Such systems were popular for two reasons: (a) the lack of a clearly defined role of the judiciary and (b) the public's distrust of the colonial judges who were selected by and beholden to the King of England (Croley, 1995). Legislatures, often actively opposed to the Crown, were generally better regarded than colonial governors, who like judges, were appointed by the King. Public faith in legislatures declined in the wake of increased legislative activity in

the 19th century, much of which was perceived as special favors that did not serve the public's interests. The view that the judiciary, through popular control, could serve as an effective check on the other branches of government gained popular momentum (Hanssen, 2004).

Elective systems. Although appointive systems were common after the Revolution, a few states (including Georgia, Indiana, and Vermont) chose to select judges through elective means (Croley, 1995). From the 1840s on, following a newfound fondness for popular control advanced within the "Jacksonian" era of politics, several new and existing states[1] adopted popular elections as the means of judicial selection (Baum, 1986). Reformers, though, were not necessarily cut from the same cloth as the Jacksonians – they sought a court that would be independent of the legislature's pressure and thereby better able to serve as a distinct branch of government, capable of providing an adequate balance rather than a court that represented and responded to public opinion (Hanssen, 2004).

Aside from independence, reformers sought a more productive court. Elections, they reasoned, would exert enough pressure on the judiciary to motivate judges to better

[1] States that switched to partisan elections between 1846 and 1909 included: New York (1847), Illinois (1848), Kentucky (1850), Michigan (1850), Missouri (1850), Pennsylvania (1850), Indiana (1851), Maryland (1851), Ohio (1851), Tennessee (1853), Iowa (1857), Alabama (1867), North Carolina (1868), Arkansas (1874), Texas (1876), Florida (1887), Georgia (1896), and Louisiana (1904) (Hanssen, 2004). States that joined the Union after 1846 with partisan elections as the original judicial selection system included: Wisconsin (1848), California (1850), Minnesota (1858), Oregon (1859), Kansas (1861), West Virginia (1863), Nevada (1864), Nebraska (1867), Colorado (1876), Montana (1889), North Dakota (1889), South Dakota (1889), Washington (1889), Idaho (1890), Wyoming (1890), Utah (1896), and Oklahoma (1907) (Hanssen, 2004) States that joined the Union after 1846 with non-partisan elections as the original judicial selection system included: Arizona (1912) and New Mexico (1912) (Hanssen, 2004). For a detailed timeline of state judicial selection methods, see Hanssen (2004), Table 1 (pp. 442-443).

serve the public (Hanssen, 2004). The judiciary itself was also partly responsible for the push for popular control of state courts. The formalization of the judiciary's role in policymaking in *Marbury v. Madison* (1803) (wherein Chief Justice Marshall declared, "It is emphatically the province and duty of the judicial department to say what the law is" (p. 177).) sparked public concern over the power of judges who were not directly accountable to the people (Geyh, 2003). Reformers also believed that elections would result in higher quality judges as the judiciary would be independent from other political institutions (i.e., cronyism would be eliminated) (Dimino, 2005).

Critics of judicial elections were numerous. For instance, Alexis de Tocqueville (trans. 1969), writing in *Democracy in America*, noted:

> Certain constitutions make the members of courts *elected* and submit them to frequent reelections. I dare to predict that sooner or later these innovations will have dire results and that one day it will be perceived that by so diminishing the independence of the magistrates, not only has the judicial power been attacked, but the democratic republic itself. (p. 269)

Despite opposition from such leaders, judicial elections gained in popularity during the latter half of the 19th century. In 1832, Mississippi became the first state that elected all of its judges. By the end of the Civil War, 24 of the 34 states had adopted popular election systems for some or all of their judges (Berkson & Caufield, 1980/2004). Every state entering the Union between 1846 and 1958 adopted elective judiciaries (Croley, 1995).

Although initially judicial elections were partisan in nature, nonpartisan elections were adopted by several states to combat issues stemming from "party politics." In 1878,

the American Bar Association publicly addressed the undesirable influence of party politics and denounced partisan elections in favor of non-partisan contests. Critics of partisan judicial elections argued that election results were subject to manipulation and elected judges served the party rather than the public (Hanssen, 2004). The public's views of judges also shifted: they were now seen as corrupt and incompetent (Berkson & Caufield, 1980/2004). Though partisan judicial elections had been adopted with limited opposition some, including delegates to the 1853 Massachusetts Constitutional Convention, described the widespread adoption of partisan judicial elections as a failure (Berkson & Caufield, 1980/2004). Nonpartisan popular judicial elections became the selection system of choice for new states and several existing states beginning in the early 1910s[2] (Baum, 1986), though nonpartisan judicial elections appeared as early as 1873 in Cook County, Illinois.

Despite the populist appeal of an elected judiciary, several states and prominent leaders grew disenchanted with nonpartisan elections as a way to increase democratic accountability and enhance judicial independence. Roscoe Pound famously addressed the American Bar Association in 1906 and voiced his own criticism of elective systems, namely the transformation of judges into politicians and the resulting destruction of the "traditional respect" for the judiciary (Berkson & Caufield, 1980/2004).

[2] States that adopted non-partisan elections included: North Dakota (1910), California (1911), Ohio (1911), Minnesota (1912), Washington (1912), Nebraska (1913), Wisconsin (1914), Nevada (1915), Wyoming (1915), South Dakota (1916), Oregon (1932), Idaho (1935), Montana (1935), Michigan (1943), Maryland (1952), Tennessee (1952), and Utah (1952). States that joined the Union after 1846 with non-partisan elections as the original judicial selection system included: Arizona (1912) and New Mexico (1912) (Hanssen, 2004). For a detailed timeline of state judicial selection methods, see Hanssen (2004), Table 1 (pp. 442-443).

As early as 1908, the members of the South Dakota Bar Association voiced their dissatisfaction with their own nonpartisan elective system. By 1927, three states that had adopted nonpartisan judicial elections decided to abandon them. William Howard Taft, as well as a number of prominent lawyers, voiced dissatisfaction with the popular election of judges. Taft, speaking before the Cincinnati Bar Association, claimed that the notion of men campaigning for a judicial office was so "disgraceful" and "shocking" that it should be condemned.

Merit selection. Although creating a judiciary separate from the powers of state government was a goal of reformers in the mid-19th century, insulating judges from political influence became a growing concern in the early part of the 20th century. The American Judicature Society (AJS), formed in 1913, drafted a number of reform proposals, including a new method of judicial selection designed to combat the issues elective systems generated. The proposed system (commonly referred to as merit selection or the Missouri Plan) combined elements of pre-existing selection systems in order to balance both judicial independence and democratic accountability. The Missouri Plan consists of several steps. First, an independent commission compiles a list of nominees for judgeship. Next, the state's governor chooses a new judge from the list, who assumes the judicial post. At a later date—usually two years after appointment--, the public has the opportunity to either approve or disapprove of the selected judge in a retention election. Typical ballots include language such as, "Shall Judge _____ be retained in office?" and voters are given "yes" and "no" response options. A judge who is successfully retained then serves a full term; those who are not retained are removed from office and the selection process to fill the vacant seat begins again.

Missouri was the first to adopt this system in 1940, so this hybrid system is typically referred to as the "Missouri Plan," though it is also frequently known as "merit selection" or the "Kales plan" (named after Albert M. Kales, one of the founders of the AJS who devised the plan) (Berkson & Caufield, 1980/2004). Changes to states' judicial selection systems since 1950 have largely involved the adoption of merit selection systems[3] (Baum, 1986).

Balancing Judicial Independence and Democratic Accountability

The methods by which we select judges have progressed over the years in tandem with the expectations of the role of judges in society. However, no single method has proven entirely satisfactory. Part of this conundrum can be explained by our competing ideas as to what we want judges to *do* (Pozen, 2008). We expect "good judges," but "good judging," is "like pornography: It's hard to define, and most people believe they know it when they see it" (Alsdorf, 2003 p. 198). Based on how our states select judges, one develops an odd, often conflicting set of expectations about the role of judges in our government. As Kritzer (2007) notes,

> We want judges to exercise their independent judgment, so long as they are not too independent. We also want judges to be accountable to the public. We value judicial independence, just not too much of it. We want judges to 'call 'em like they see'em,' provided that 'they don't see'em too differently from the way we see'em. (pp. 423-424)

[3] States that adopted the Missouri plan for at least some of their judges after 1950 include: Kansas (1958), Alaska (1959), Hawaii (1959), Iowa (1962), Nebraska (1962), Colorado (1966), Oklahoma (1967), Utah (1967), Indiana (1968), Florida (1972), Wyoming (1973), Arizona (1974), Maryland (1976), South Dakota (1981), and New Mexico (1989) (Hanssen, 2004).

Ideally, the judiciary keeps the legislature and executive in check, upholds the US Constitution, and ensures that the majority does not undermine the rights of marginalized populations. At the same time, the judiciary should respect the powers of the other branches of government and administer the laws they create. Those who hold public office should be held accountable for their actions. Although the judiciary is not formally charged with such a responsibility, there is the desire that the judiciary should *represent* the public (i.e., members of the judiciary should reflect the diversity of the populace). In sum, there are two primary roles that judges fulfill: the role of an appropriately independent, impartial protector and the role of an accountable, representative, unique policymaker.

Judicial independence. As the Due Process clauses of both the Fifth and Fourteenth Amendments grant the right to a fair trial, judges should act both independently from public opinion and political institutions and impartially (i.e., judges should be objective and unbiased). As Carrington (1998) noted,

> Courts and judges are the bulwark against the disintegration of the mutual trust sustaining the life of democratic government. They are our 'last best hope' that the Republic will not be overrun by the greed, mendacity, brutality, moral arrogance, prejudice, and petty hatreds, … the inescapable stuff of the dark side of human nature … To fulfill that hope requires our judges to be independent. (p. 80)

However, obtaining truly independent and impartial judges is an impossible task. Instead, Geyh (2003) suggests we strive for an "appropriately independent" judiciary. According to his view, "no one suggests that judges should be so completely free from influence or control that they may pursue avocations as outlaws or libertines, whenever

the spirit moves them" (p. 52). This goal, however, is inadequately defined: how independent is *too* independent? Ultimately, the states decide how to define and obtain appropriately independent through policy and choice of selection system.

Public opinion. As appointed judges do not secure their positions through popular vote, the influence of public opinion and campaign donors is minimized; therefore, judicial independence (relative to the public) is enhanced. Appointed judges are more likely to overturn lower courts' rulings in death penalty cases even in states whose residents strongly favor the death penalty (Brace & M.G. Hall, 1997). Appointed judges are less predictable because they are less likely to respond to political pressure. Lowered pressure manifests in appointees' longer terms and higher retention rates (Hanssen, 1999).

Although judicial independence is enhanced in appointive systems, it is not absolute. Judges who serve lifetime appointments remain susceptible (to a degree) to the power of public opinion. Mishler and Sheehan (1993) show that the public mood and the ideological sentiment of US Supreme Court decisions are indeed linked in a reciprocal relationship, though decisions lag behind public sentiment.

Elected judges are more susceptible to the climate of public opinion. Public opinion not only influences the types of cases judges hear, but also how judges rule. State supreme court justices who face the electorate are less likely to hear cases involving the controversial topic of abortion (Brace & M.G. Hall, 1990, 1999). Elected judges are also more inclined to hear cases involving "David and Goliath"-type scenarios (i.e., cases involving one litigant who has a great deal of resources and one litigant who is resource poor) due to their populist appeal. "[C]ourts standing as a barrier against majority tyranny

and as protector of the downtrodden is one the most popular images in American politics" (Brace & M.G. Hall, 2001, p. 395).

Judges who face an electorate are also susceptible to the public's influence when it comes to deciding cases. Judges who anticipate a run for reelection fear being criticized for being "weak on crime" and respond accordingly by issuing tougher sentences as the election nears (Huber & Gordon, 2004). Using data regarding murders in Chicago from 1870 to 1930, Brooks and Raphael (2002) show that defendants who faced an elected trial judge in an election year were 15% more likely to receive the death penalty than those who faced an appointed judge. Judges who face retention elections and who serve in states with more favorable views of capital punishment are less likely to overturn lower courts' rulings in death penalty cases (Brace & Boyea, 2008).

Elected judges also actively avoid situations in which they could be singled out for criticism when seeking reelection. Elected justices serving states that generally favor capital punishment (e.g., Texas, North Carolina, Louisiana, and Kentucky) are more likely to uphold death sentences issued by lower courts (M.G. Hall, 1995). Likewise, M.G. Hall's (1987) examination of the Louisiana Supreme Court showed that justices who desired to remain in office, who held differing views than the electorate, and who were in the minority on prominent issues were less likely to voice disagreement with the Court's decisions in cases involving controversial issues.

Public opinion can also have indirect effects on the judiciary. This was the case with Justice Penny White, a Tennessee Supreme Court Justice. White joined the majority in an unpopular decision in 1996 that stipulated a new sentencing proceeding of a criminal case involving an individual who had been convicted for the rape and assault of

an elderly woman. The Tennessee Conservative Union launched a campaign opposing the retention of White (among other Justices). Campaigning against the opposition was difficult for White, as judges are prohibited from defending their previous decisions (although they can discuss their record in *general*, they cannot discuss *specific* rulings). Despite her efforts, she was swiftly defeated (Reid, 1999). Traut and Emmert (1998), noting the indirect power public opinion can have over the composition of the courts and their subsequent rulings, concluded:

> The retention election process allowed the public to register disapproval of judicial decision making by voting sitting justices out of office. When the public removed Justices Bird, Reynoso, and Grodin, Governor Deukmejian was able to alter the court's composition and, ultimately, to change the direction of the court's death penalty policy. (p. 1178)

Campaigning. Although not a concern for appointive systems, some aspects of campaigning dampen judicial independence in both elective and merit selection systems. Though one might initially assume retention elections are marked by a lack of campaigning (as there are no challengers in a retention election), nearly half (47.4%) of all judges up for retention engaged in some campaigning activities between 1980 and 1992 (Aspin, 1998). Although a fair share of trial court contests are uncontested (30.8%) or uncompetitive (28.7%), most candidates face competitive elections (41.5%). The majority of contests for state supreme court are competitive (68.2%), with few uncontested races (9.1%) (Abbe & Herrnson, 2002). Candidates who face competition are more likely to engage in campaign activities, though little is known as to how many candidates actively campaign.

The campaign process may damage the legitimacy of the judiciary in a number of ways. First, judicial candidates, including judges facing retention elections, may communicate political views that can mar the public's perception of an impartial judiciary. For example, a judge who runs as a "pro-life" candidate may not appear impartial if and when a case involving abortion arises. Issues related to judicial candidate speech and impartiality are explored further in Chapter Three.

Second, the need for campaign funds presents a problem for judicial candidates because the public believes the judicial decision-making process favors campaign contributors (Barnhizer, 2001). Those who believe campaign donations influence judicial decisions have lower levels of trust in the judiciary (Rottman, 2002).

Attorneys represent an obvious group from which to solicit campaign donations, as judicial candidates are likely to have come into contact with a number of them. Attorneys are a source of substantial levels of campaign funds. However, their involvement in judicial campaigns is controversial. Individual lawyers, in fact, are a substantial source of funds for judicial candidates (Dubois, 1986a; Eisenstein, 2000). On the other hand, contributions are often small and come from many attorneys. Without such funds, judicial candidates are unable to adequately reach the electorate with their campaign messages (Siciliano, 1991). Supporters of attorney contributions argue that attorneys are well-positioned to assess the qualifications of candidates. Also, the diffuse nature of funding from attorneys makes it difficult for a judge to effectively show favoritism toward a specific party.

The fear that judges appear to be influenced by contributing attorneys is not unfounded. Contributors to judicial campaigns donate not only to "sure winners" – a lot

of them also contribute to "sure losers" who are sitting judges. Contributors expect their dollars to translate into outcomes aside from the candidate's electoral success, even if judicial partiality is not one of them (Nicholson & Nicholson, 1994). Even candidates who run unopposed are recipients of substantial contributions (Nicholson & Weiss, 1986). Lawyers engage in these questionable tactics to "level the playing field" as other lawyers are likely to attempt to gain favor from judges (Siciliano, 1991). Candidates themselves are actively involved in this quid pro quo scenario as judicial candidates "[craft] messages that signal to the contributors that the candidates are willing to provide what the donors want in exchange for their money" (Barnhizer, 2001).

Judges often favor campaign donors who appear before them in court. Elected judges are 12% more likely to favor business groups who donated campaign funds compared to judges selected by other means (Kang & Shepherd, 2011). When the magnitude of the contribution difference increases, so, too, does the likelihood the donor will be favored by the supported judge (McLeod, 2008). Cann (2007) compared the Supreme Court of Georgia's decisions in 2003 against the contributions made to the Court's justices and concluded that a mere contribution of $2,000 basically secured the outcome of a case so long as the other attorney contributed no more than the average donation (between $145 and $260).

The ability to buy judge-made policy is not truly an issue if we accept the argument from legal realists that judges *make* policy. Although linkages may exist between candidates' donors and how they rule as judges, such known connections do not necessarily explain why judges rule in the way that they do. It is entirely possible that keenly aware campaign donors contribute to a candidate knowing the candidate's views

and how those views might translate in terms of rulings (Ware, 1999). A pro-business judicial candidate may receive a number of donations from business groups, but this does not necessarily demonstrate justice being bought. Though it would be "highly premature to assert absolutely a direct causal relationship between campaign contributions and decisions," McCall (2003) writes, "perhaps at the very least, it would also be inaccurate to treat elected justices as devoid of politically motivated behavior. The results suggest that decisions and dollars are related" (p. 330).

Democratic accountability. Although the task of crafting laws is generally associated with the legislature, judges also play a role in the development of policy. This role has become more pronounced in recent years as decisions made by judges have more impact on the populace now than they did in previous generations. The courts, as Dimino (2005) reviewed, have had tremendous effects in how our country approaches societal problems stemming from race, family relations, sexual intimacy, criminal justice, tort liability, education, elections, and religion. As Schotland (1985) suggested, one only need consider controversial rulings regarding criminal, environmental, and school bussing issues to have a good idea as to why the public has shown more interest in the judiciary. To update Schotland's suggestion, consider the more recent controversy over tort reform in the 1990s, the OJ Simpson murder case, and the Terri Schiavo case, which actually prompted the Florida legislature to enact a law countering the court order to remove the feeding tube from Schiavo, who was in a persistent vegetative state.

The political aspect of the judiciary is not lost on the public: 78% of registered voters feel that "political" described judges "very well" (34%) or "well" (44%). Despite

some of the shortcomings with judicial elections (as discussed in the following sections), 81% of the public is supportive of an elected judiciary (Rottman, 2002).

Public involvement. Although public participation is the hallmark of a democratic society, appointive systems operate on the basis that the public is unable to act in its own self-interest. Citizens are indeed unable to adequately monitor the performance of specific judges in any "rational or robust way" (Pozen, 2008, p. 293). From this perspective, public participation is not desirable, as the public is unable to select the candidate who will better serve the public's interest. Limiting the public's involvement with the selection process, therefore, is essential to ensuring a functioning judiciary. On the other hand, appointive systems eliminate the public's involvement in a political institution that is directly involved in the policymaking process, which is antithetical to democracy.

Merit selection systems face similar criticism as they can create the appearance of favoritism as an elite set of individuals (or simply the governor) has the power to choose who is to become judge. The common criticism, "a judge is a lawyer who has a politician for a friend," (Troutman, 2008, p. 1762) may be an especially appropriate description of such selection systems. The role of the elites in the nomination and selection process raises a number of concerns, including: (a) "panel-loading" (i.e., stacking the list of nominees so that it is clear which one the governor will select with the inclusion of others for "window-dressing"), (b) "panel-rigging" (i.e., creating a list of nominees with no real viable nominee, e.g., including one political friend of the governor, one enemy of the governor, and one from an opposing party), and (c) "panel-wiring" (i.e., the governor's

preferences are relayed to commissioners and a panel is created based around those preferences) (Sobocinski, 2006).

Elections, on the other hand, enhance judicial legitimacy as they remind the public that political institutions, including state courts, are accountable to them (Gibson, Gottfried, Delli Carpini, & Jamieson, 2011). Voters, it seems, are capable of holding current judges accountable for as a state's murder rate rises, incumbent judges are more likely to be voted out of office (Streb & Frederick, 2008). However, judicial elections face a number of bleak political realities.

Voters do not receive adequate amounts of information about judicial candidates, and thus many simply do not participate in judicial elections. Johnson, Shaefer, and McKnight (1978) found that less than 15% of the people they surveyed could even recall the name of one candidate for the state supreme court or court of criminal appeals. In uncontested elections, this figure fell between 2.5% and 4.9% depending on the state. Voters, according to Rottman (2002), simply do not have an adequate amount of information about judicial candidates, which is why they do not participate in judicial elections. Nearly half of those surveyed reported having only a little information (35%) or no information at all (14%) concerning judicial candidates. The most common reason cited for not participating in judicial elections was not having enough information about the candidates (cited by 18% of those surveyed).

Ballot roll-off (i.e., voters abstaining from casting votes in specific electoral contests despite coming out to the polls) is a common feature of most judicial contests. Between 1980 and 2000, ballot roll-off for state supreme court elections averaged anywhere from as low as 6.3% to as high as 59.2% depending on the state. Roll-off is the

result of both voter fatigue (in the case of ballots that contain a great number of electoral contests) and lack of information about the candidates. Voter participation levels in retention elections are dismal, falling well below the rates associated with both partisan and nonpartisan elections (Dubois, 1979b). Ballot roll-off across states that held major trial court retention elections between 1964-1984 averaged anywhere from 31.9% to 41.9% (W.K. Hall & Aspin, 1987).

Voters in state supreme court elections frequently cite "general impressions" of the candidate as their primary reason for casting ballots for a specific candidate (Hojnacki & Baum, 1992a). Voting cues are also gleaned from the ballots themselves. In partisan contests, party labels that appear next to judicial candidate's names decrease roll-off (Dubois, 1979a).

In the absence of partisan labels, voters may obtain partisan information from other sources. Labor unions, for instance, are capable of providing substitute information to union members in nonpartisan races (Hojnacki & Baum, 1992b). Though limited to California's Superior Court, occupational labels (three-word designations that appear on ballots that describe the candidate's occupation, such as "Businessman, Farmer, Legislator") serve as a powerful source of information for voters, often providing more of a benefit to candidates than increased campaign spending (Dubois, 1984).

Name recognition also serves as a powerful influence. Candidates who share a name with another famous politician or citizen are likely to see a boost in their overall vote share (Schotland, 1985). A candidate's name may be used as an indicator of the office-seeker's gender, race, and ethnicity (Matson & Fine, 2006). Female candidates

tend to be perceived as more ideologically liberal than male candidates of the same political party; voters who hold this perception vote accordingly (McDermott, 1997).

The "friends and neighbors" effect is also prevalent in retention elections as voters in such elections typically come from the judge's home county. Although friends and neighbors are more likely to vote than those outside of the judge's home county (roll-off rates in home county elections are 24% compared to 32% in non-home county elections), they are not more likely to vote the affirmative (Aspin & W.K. Hall, 1987). Thielemann (1993) refers to this phenomenon as the "friends and enemies" effect wherein supporters and opponents are activated by the presence of a home county candidate.

Candidate quality. As judges are involved in the policymaking process, states may desire a judiciary whose members reflect the diversity of interests found within the general public. There appears to be some support for the notion that elected representatives, taken together, should reflect the demographic makeup of the populace (particularly in terms of gender, race, and ethnicity) (Solimine, 2002). Justice Clarence Thomas noted the "intuitive" appeal of representatives proportionally reflective of the electorate ("Holder v. Hall," 1994). However, the US District Court Northern District of Georgia concluded that the judiciary was not a "representative body" in *Stokes v. Fortson* (1964). The district judges concluded,

> Judges … are not representatives in same sense as are legislators or the executive. Their function is to administer the law, not to espouse the cause of a particular constituency. Moreover there is no way to harmonize selection of these officials on a pure population standard with the diversity in type and number of cases

> which will arise in various localities, or with the varying abilities of judges and prosecutors to dispatch the business of the courts. An effort to apply a population standard to the judiciary, would, in the end, fall of its own weight. (p. 577)

Regardless, the diversity of the court is a pressing concern for many scholars (e.g., Casey, 2010).

The interest in a diverse court stems from the notion that a diverse government would ideally reflect the needs and interests of the diverse public. This holds true for the judiciary as judicial decision-making is influenced by the judges' background characteristics and experiences (Epstein, Knight, & Martin, 2003). Women are expected to be more sensitive to legal issues that men do not face as frequently (e.g., sexual harassment) (Williams, 2007). Likewise, we can expect that judges of diverse racial and ethnic backgrounds are similarly sensitive to issues that are more salient for people of varying racial and ethnic backgrounds.

However, whether a diverse court system enhances perceived institutional legitimacy remains to be seen. Both women and racial/ethnic minorities have lower levels of institutional support for state courts (Cann & Yates, 2008), which might be explained by a perceived lack of representation in the state courts. However, the evidence regarding the public's desire for a "representative" judiciary does not support such conclusions. Across different levels of knowledge of the judiciary, voters remain "undecided" when it comes to the notion that more ethnic and racial minorities should serve on the bench (Lovrich, Sheldon, & Wasmann, 1988).

Overall, research suggests women's representation in state courts of last resort has increased in the past few decades. In 1980, less than 3% of justice positions on state

courts of last resort were held by women; in 1993, this figure was closer to 15% (Alozie, 1996). When women run for intermediate appellate court judgeships, they often perform better than male candidates (particularly in open seat contests) (Frederick & Streb, 2008). However, when compared to men, women candidates do have some disadvantages, most notably in their bids for reelection. Female judges may not, as Reid (2004) suggests, be able to use their incumbency status to pave the way for electoral success. Reid's (2004) examination of district court races between 1994 and 1998 found that women incumbents, on average, received 51.91% of the overall vote, whereas their male incumbent counterparts gained a slightly higher percentage (52.84%) despite the fact that female incumbents were far better fundraisers (total receipts for female incumbents averaged $31,584 compared to $28,647 – the average total receipts from male incumbents). Although the trend suggests greater representation for women in the judiciary, only one-third of judicial candidates in 2007-2008 were women; men continue to dominate judicial elections (Casey, 2010).

On the other hand, few judges and candidates for judicial office are members of racial or ethnic minority groups. Although African Americans have gained representation in state courts of last resort (comprising 9% of all state supreme court justices), members of other racial and ethnic minorities are greatly underrepresented relative to the general population (American Bar Association, 2010). Casey's (2010) analysis of all state judicial elections from 2007-2008 showed that only one out of every eight judicial candidates were members of a racial or ethnic minority group.

Supporters of appointive or merit selection systems claim qualified individuals may be more inclined to seek a judicial position as the problems with politics are

diminished (if not entirely removed) within such systems. The time and money requirements to reach office are reduced or removed; candidates for appointment or selection are (ideally) judged on their professional experiences and record rather than their campaigns. Appointive systems draw upon eligible candidates for judicial office, a much larger pool than those who are eligible and willing to run for office, thereby increasing the likelihood of selecting the most highly qualified for office. The opportunities for women and minorities to reach the bench are also greater under non-elective systems (Sanders, 1995).

Electoral competition. Aside from the quality of candidates recruited through elective systems, accountability can be conceptualized as the product of electoral competition with the presence of challengers as one empirical indicator. Contestation, at least in state supreme court elections, increased from 1980 to 2000: at least three of every four incumbents faced challengers when seeking reelection. Relative to the US House of Representatives, state supreme court seats are competitive in terms of the incumbent defeat rate (M.G. Hall, 2007).

Although elections for positions on state courts of last resort are often competitive, contests at lower levels of the judiciary may be less so. Solimine (2002) notes that though races for Ohio Supreme Court are highly competitive, races for lower courts in the state are often uncontested. Fewer than half of the races for courts of appeals and trial courts include more than one candidate and those that are contested are mostly open seat races. Re-election rates for incumbents facing challengers are high. Incumbent judges in the lower courts of Ohio boast an 80% electoral success rate.

Another influence over competitiveness is the impact of incumbency. The presence of an incumbent judge on the ballot in both major and minor trial courts greatly inhibits the likelihood of challengers entering the race (Volcansek, 1981). Advantages enjoyed by incumbents may discourage potential opposition from entering the race. First and foremost, incumbents have a clear advantage when it comes to fundraising (Bonneau, 2007a). However, in the case of courts of last resort, compared to challenger spending, incumbent spending is less effective at securing votes. That said, challengers must outspend incumbents to overcome a number of non-monetary advantages incumbents possess (e.g., name recognition, existing connections to campaign donors, etc.) (Bonneau, 2007b; Bonneau & Cann, 2011). Although incumbents may have higher visibility, recognition is not necessarily an asset to their campaigns for reelection, as being well known does not mean that the judge is subsequently well liked (or supported).

A third influence over competitiveness stems from whether or not the election is partisan. A higher proportion of partisan elections are competitive compared to nonpartisan elections. Between 1980 and 1994, 61.1% of partisan elections featured challengers, whereas only 44.2% of nonpartisan elections did (M.G., 2001). Partisan contests may feature more contested elections as political parties desire a presence in elections.

Judges facing retention are rarely unsuccessful. Between 1964 and 1994, a mere 50 judges (1.3% of the 3,912 who stood for retention during this time period) were defeated (Aspin, W.K. Hall, Bax, & Montoya, 2000). The public, it appears, is largely unwilling to cast “no” votes in retention elections because of the uncertainty of who might be appointed to take the place of the current sitting judge. A slightly less-than-

mediocre judge might end up being replaced by a foul, nefarious one. As Geyh (2003) noted, when it comes to retention elections, "there is no choice to make between competing candidates or viewpoints, no race to follow, no opportunity to pick a new winner, and no political party to support" (Geyh, 2003, p. 55).

The Enduring Pervasiveness of Judicial Elections

As of 2012, 43 states require at least some of those who seek a judgeship or seek to retain judicial office to face the electorate in partisan, nonpartisan, or retention elections (American Judicature Society, 2012)[4]. The pervasiveness of direct popular involvement in the selection and retention of judges does not, however, extend beyond America's borders. In fact, America is the only advanced democracy that elects a significant portion of its judiciary (Pozen, 2008).

Although groups, such as the ABA, notable politicians, and several states have been vocal in their opposition to the practice, attempts to replace elective systems have failed in many states, including South Dakota, Florida, Michigan, and Louisiana, which had considered constitutional amendments to implement merit selection in 1997, 1999, and 2003 (Streb & Frederick, 2007). Those who have the opportunity to select and/or retain judges prefer to keep it that way despite the flaws associated with elective systems.

Regardless, direct public involvement in the selection or retention of judges is likely to remain popular, given the historically slow pace with judicial selection reforms. The effort to do away with judicial elections stretches back to Roscoe Pound's 1906 milestone speech, which outlined several causes for the public's dissatisfaction with the

[4] States where the public is not directly involved in the selection and/or retention of any and all state judges include: Delaware, Hawaii, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Virginia.

courts, including public opinion's influence in the administration of justice. Roy Schotland (1998), a critic of contemporary judicial campaigns, laments: "one would hardly suspect that more sweat and ink have been spent on getting rid of judicial elections than on any other single subject in the history of American law" (p. 150). And yet, here we are over a century after Pound's speech, with many states continuing the often-criticized, yet ever-popular tradition of selecting or retaining judges by election.

As discussed in the following chapter, judicial campaigns have changed in the past few decades, which calls into question how well systems that require judicial candidates and judges to rely on the public to gain and maintain office balance judicial independence and democratic accountability. Rather than being "unremarkable, quiet, dignified affairs" (Caufield, 2007, p. 36), campaigns for judicial office have become "noisier, nastier, and costlier" (Schotland, 1985, p. 76). Campaign costs have skyrocketed, campaign messages have become more politically charged, negative advertising is becoming more and more commonplace, and external groups have become more influential in the selection of judges. Judicial independence is threatened as a result of these so-called "new-style" campaigns and therefore the institutional legitimacy of the judiciary is jeopardized.

Chapter Three

New-Style Judicial Campaigns

Judicial campaigns have not been without their fair share of controversy over the years. Shortly after Kentucky adopted judicial elections in the 19th century, the commonwealth bore witness to a string of some of the most controversial contests. Thomas F. Hargis' three attempts at securing judicial office were plagued by distasteful campaign tactics. Hargis' opponents accused him of bribing judicial convention delegates, manipulating judicial records, and dishonorably refusing a challenge to duel (for shame!) (Ireland, 1995).

The most common concerns over contemporary judicial campaigns state that judicial elections have become bitter battles, featuring potentially harmful candidate speech, greater involvement from non-candidate groups (e.g., political parties and interest groups), and escalating campaign expenses. During in the latter half of the 21st century, scholars began investigating a number of emerging trends, including the escalating costs of campaigning (Dubois, 1986a, 1986b; Schotland, 1985) and changes in campaign communications (Gary, 1981; Kiovsky, 1986). Critics express concern that "costly, intense, politicized" judicial campaigns erode the public's goodwill toward state courts (Cann & Yates, 2008). New-style campaigns occur primarily in contests for appellate courts, including state supreme courts and other courts of last resort (Champagne, 2002a). It is unclear whether contests for lower courts exhibit similar qualities. Although legal scholars and organizations (e.g., the American Bar Association, the Brennan Center for Justice, and the Justice at Stake Campaign) have expressed concern over the diffusion of new-style judicial campaigns, empirical evidence is lacking in several key areas.

Communication Methods

In order for candidates to be successful, they must communicate with the public. This can be accomplished through three different channels: earned ("free") media (e.g., news media coverage), paid media (promotional communications such as television advertising), and direct communications (e.g., direct mail and door-to-door campaigning).

Earned ("free") media. News media organizations provide voters with crucial information about candidates and contests. Media enhance democratic accountability by informing the public. The more voters know about the candidates for office, the more likely they are to participate in the election (Hojnacki & Baum, 1992). Media can also affect the public's perception of the judiciary by acting as a "watchdog" over candidate malfeasance in office and during the campaign.

The 2000 Ohio Supreme Court election demonstrates the role journalism can have in judicial elections. Citizens for a Strong Ohio, an interest group funded by anonymous donors, aired several misleading ads that suggested incumbent Justice Resnick was biased and claimed she reversed a verdict due to the desires of her campaign donors. The ads were extremely deceptive, but Ohio's laws barred Resnick from discussing previous court decisions, so she was unable to adequately respond to the mischaracterizations. Although weekly and alternative publications failed to cover this contentious race (only 12 out of 300, or 4%, published editorial commentaries about the race), daily papers published a number of editorials focused on the ads that were running in the state (64.7% of all editorials discussed controversial television ads). Opinion pieces frequently described the ads as "unfair" (48% of all articles related to the campaign or election); however, few articles discussed the high cost of the ads (20.6%), the anonymous nature of the source of

funds for the ads (32.4%), or possible reform efforts (11.8%) (Hendrickson & Hale, 2004). After a series of hearings, the Ohio Elections Commission disciplined Citizens for a Strong Ohio for the content of the ads (Ohio Elections Commission, 2005).

For the most part, judicial contests receive almost no coverage. The average campaign for state supreme court between 2000 and 2004 was covered in less than 10 stories – about 8 times less than the amount of stories devoted to races for the U.S. Senate (Schaffner & Diascro, 2007). Unfortunately, even when races received attention, the coverage was less than ideal. A significant portion of stories (24.4%) appeared on the editorial page. Most news stories were not prominently featured (58.6% did not appear on the front page or first section) and the contests were not the focal point for a number of stories (39.2%). The majority of stories focused on who was likely to win or lose (78.8% of stories) rather than any substantive information about the candidates (48.5% of stories).

There are a number of reasons judicial elections fail to generate significant news coverage. First, judicial candidates must compete for newspaper space alongside other candidates in other contests. Second, mass consolidation of news organizations has resulted in far less attention paid to local news, including elections (Schaffner & Diascro, 2007). Lastly, the number of reporters and editors employed by news organizations has decreased in recent years as a result of diminishing revenues, which have also limited the capacity for organizations to publish enterprise or investigative stories. Instead, journalists focus on covering staged events, press releases, and advertisements (Schaffner & Diascro, 2007). This is particularly problematic in the case of judicial candidates as they face speech restrictions unique to the judiciary that prevent them from campaigning in the same manner as their legislative and executive counterparts. However, as speech

restrictions are loosening (discussed later in this chapter), candidates are positioned to generate more coverage (Rottman & Schotland, 2005).

Candidates can use a number of techniques to improve their chances of receiving coverage. Not all publicity is good publicity, though. In order to gain coverage, candidates submit press releases, inform correspondents of their campaign schedule, invite correspondents to campaign events, solicit and plan interviews, and participate in debates. Unlike paid advertisements and some forms of direct communications, candidates have limited control over the content of earned media. Candidates who find themselves embroiled in scandal can expect greater news coverage, though it will not be to their liking.

Both the volume and nature of press attention to a campaign affect the relationship between candidates and the news media. Candidates who feel that the media are against them, as many Republican candidates do (Herrnson, 1994), may become cynical of their chances of reaching office and may forego future bids for election, removing qualified candidates from the pool of potential judges. A candidate who receives minimal press coverage may find running against a well-known incumbent difficult, if not impossible, and choose to forgo any attempt at running for office. Thus, it is important to understand judicial candidates' perspectives regarding the news media. We therefore pose the following research question:

RQ1: How important is the news media for judicial candidates?

Paid media. Even though candidates for public office frequently use campaign advertisements, the public views them as poor information sources. Those who vote in judicial elections claim to gain information from rather inexpensive sources including

voter guides, friends and family members, recommendations from attorneys, results of various bar association polls, newspaper editorials, meetings with the candidates, door-to-door contacts with the candidates, and small neighborhood meetings (Bonneau, 2005). Despite such reports, paid media are crucial for candidates attempting to reach a large audience.

Candidates' use of television advertising draws attention to judicial campaigns but the content of ads raises a number of concerns. As Brandenburg and Schotland (2008) note, "TV ads are as likely to educate voters about judicial qualifications as they are to provide nutritional information about french [sic] fries" (pp. 1241-1242). Carrington (1998) offers a similar critique:

> The political advertisement inserted into commercial television reaches large audiences of persons who are not seeking political information and are in an uncritical frame of mind. If well done with art, music, and a voice sounding like Walter Cronkite, the advertised message 'melts down' so that the viewer assimilates disinformation without being aware of its source. (p. 81)

Besides being devoid of substantive information, television ads are often criticized for misrepresenting facts and preying upon voters' fears. Proponents of judicial selection reform reference a long line of television ads from judicial campaigns going back to the 1980s to demonstrate the need for comprehensive campaign reform (Brandenburg & Schotland, 2008).

Television is a useful medium for relaying visual information to large audiences. Images can carry strong emotional appeals and can have a powerful impact compared to plain text (Herrnson, 1994). Aside from visual information conveyed in ads, candidates

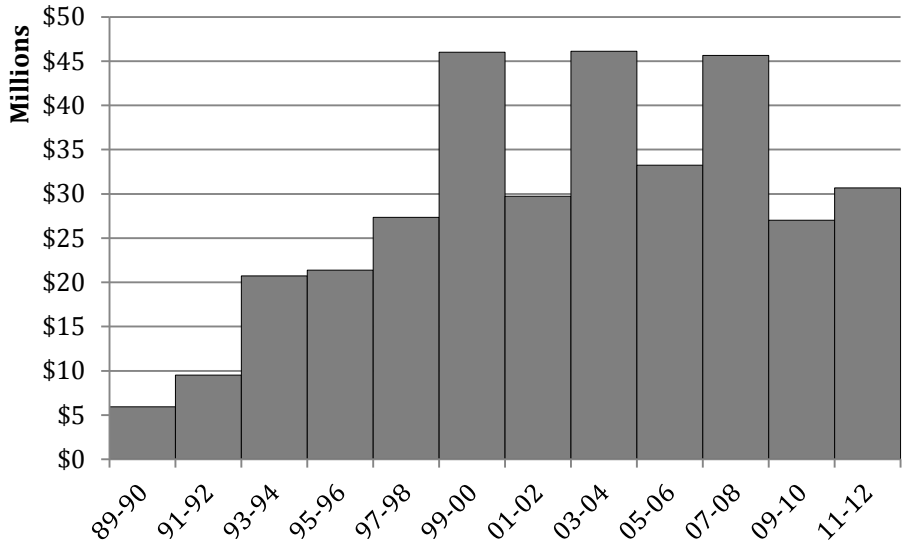
also like television advertising as it allows for a high degree of control over the message content. However, due to the high cost of television ads, campaigns may settle on less attractive ad purchases, such as pre-emptible ads and ads airing during off-peak times.

Television ads are often a necessity for campaigns for appellate and supreme court judgeships (Abbe & Herrnson, 2002). "The formula is simple," Honorable Pamela Willis Baschab (2002) writes, "Money = T.V. ads = name recognition = election victory" (p. 829). Although her formula is an oversimplification, there is a pattern of high margins of victory in areas where televised ads are used (Champagne, 2002b).

It is no surprise then that television advertising has become commonplace in judicial elections. Although only 4 states witnessed TV ads for judicial candidates in 2000, in 2004, ads ran in 15 states, 10 of which saw them for the first time (Rottman & Schotland, 2005). The increase in the presence of TV ads has driven up the cost of campaigning for judicial office. Figure 3.1 shows the dramatic increase in campaign costs since 1989. Though there are fluctuations depending on the year of the election, the overall trend is upward. Between 2000 and 2009, a total of 537 candidates for state supreme court raised over $206 million for their campaigns. This figure represents more than twice the amount of funds raised between 1990 and 1999. Of the 22 states that choose to elect their supreme court judges, 20 saw record spending between 2000 and 2010 (Sample, et al., 2010; Skaggs, et al., 2011).

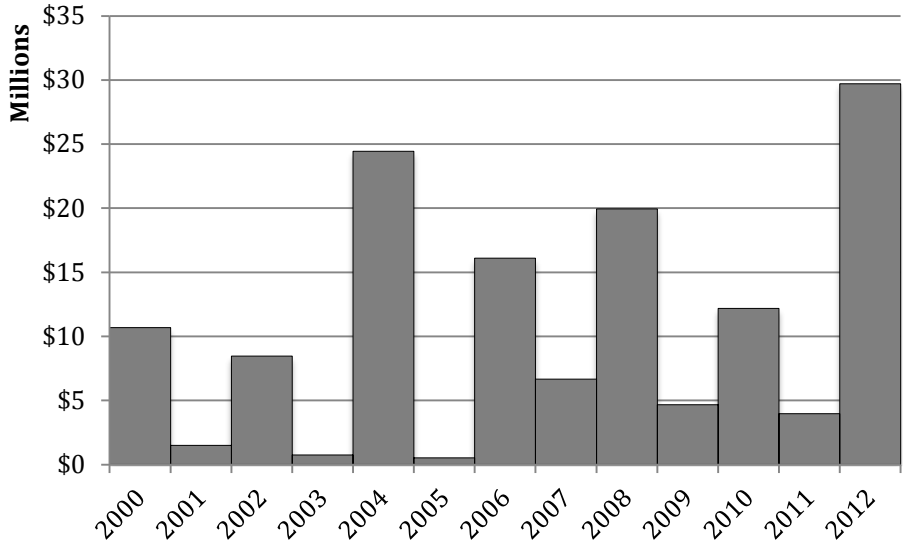
Candidates are required to raise tremendous amounts of contributions to support their media-driven campaigns. As Figure 3.2 shows, television ads make up a substantial expenditure for campaigns; within this past decade, $93.6 million was spent on 214,105 airings (Sample, et al., 2010; Skaggs, et al., 2011). This trend is continuing as over $29.7

Figure 3.1. ***Aggregate State Supreme Court Fundraising, 1989-2012.***



Note. Data compiled from Sample, et al. (2010), Skaggs, et al. (2011), and Bannon et al. (2012).

Figure 3.2. ***TV Spending in State Supreme Court Races, 2000-2010.***



Note. Data compiled from Sample, et al. (2010), Skaggs, et al. (2011), and Bannon et al. (2012).

million was spent on television ads in state supreme court races in 2012, breaking the previous single-year record of $19.9 million set in 2008. Interest groups and political parties accounted for 61.4% ($20.7 million) of television ad expenditures in these races. In 2011-12, interest groups alone accounted for $15.4 million spent in judicial elections, up substantially from the $9.8 million spent in 2003-04 (Bannon et al., 2012). Television spending during primary elections totaled more than $7 million, and for the first time, ads supportive of judges standing for retention aired in Florida and Oklahoma (Bannon et al., 2012).

Escalating judicial campaign costs are a concern due to the source of campaign contributions. The increased need for campaign funds has, according to Brandenburg and Schotland (2008), "left judges feeling trapped in a bad system, forced to raise money from the attorneys and parties appearing before them, and constantly looking over their shoulder at interest groups and their demands" (pp. 1239-1240). Candidates who accept campaign contributions from parties with close connections with the courts weaken the judiciary's institutional legitimacy; the public is none too keen on candidates accepting contributions from parties who could no doubt shape the judge's decision-making process (Gibson, 2008b, 2009; Gibson & Caldeira, 2012).

Other forms of paid media advertising, such as radio and newspaper advertising, are also popular means to distribute campaign messages. Radio is relatively inexpensive and can reach narrowly targeted segments of the electorate as stations are designed to attract smaller, more homogenous audiences relative to broadcast television audiences. Newspaper advertising generates a larger reach compared to radio and newspaper readers are more likely to vote than audiences for other media (Herrnson, 1994). In 1999, both

radio and newspaper ads have been popular with low- and high-spending candidates (using $50,000 as the defining threshold) for state legislative offices. Radio ads were used by 44% of low-spending candidates and 67% of high-spending candidates. Newspaper ads were more popular; 70% of low-spenders and 74% of high-spenders used them in their campaigns (Faucheux & Herrnson, 1999).

Given the challenges these media have faced recently (e.g., decreasing revenues, consolidation, and smaller audiences), candidates may be less likely to purchase ads in the traditional mass media, and those that do may find them to be less effective than they were in the past. However, given their continued use among those likely to vote advertising in traditional media may still be an attractive option for judicial candidates.

Direct communications. Other campaign communications are more direct in nature (e.g., direct mailings, mass telephone calls, etc.). Although paid media advertising offers candidates a high degree of control, direct communications vary in terms of the control candidates have in terms of the content of their messages. Some forms maintain a high degree of control (e.g., yard signs, campaign literature, direct mailings, and websites), whereas others open the door for more interactive, less tightly controlled communications (e.g., debates, pages on social networking sites, and door-to-door campaigning).

Traditional direct communication techniques include direct mail, distributing campaign literature (e.g., pamphlets), telephone calls, billboards, yard signs, and door-to-door campaigning. Although direct mail and campaign literature can be effective at soliciting both campaign donations and votes (Herrnson, 1994), it is less image-based than television advertising and it is more likely to be tossed aside as “junk mail.”

Telephone calls can be used by campaigns to gather information about voters and mobilize supporters through providing up-to-date information about campaign events. Billboards and yard signs can be an inexpensive way to gain name recognition in a community, though they face space limitations and are unable to carry in-depth, lengthy messages. Direct person-to-person campaign communications are more effective at political persuasion, though they are also the most time- and labor-intensive. Although relatively inexpensive, such communications require an army of volunteers capable of canvassing entire communities (Herrnson, 1994). Regardless, candidates for lower level offices frequently use and recognize such inexpensive, direct communications as important campaign methods (Abbe & Herrnson, 2002). In the late 1990s, direct mail, literature drops, and billboards and signs were the most popular campaigning methods for state legislative candidates, with more than 70% of candidates employing such methods (Faucheux & Herrnson, 1999).

Candidates may be more willing to engage in less expensive, contemporary communications media, such as the Web, e-mail, or social networking sites as "modern information technology allows judicial candidates to deliver vast amounts of information to a rapidly growing segment of the electorate, free of economic or strategic constraints" (Iyengar, 2002, pp. 698-699). In the past, candidates for lower level offices found websites to be important components of their campaign (Abbe & Herrnson, 2002), though given the rise of social media, static "broadcast-style" websites may be less important for modern campaigns.

New media provide both a number of opportunities and drawbacks. Websites can provide information about candidates and include more image-based communications

than traditional direct communications. E-mail can be used in a similar manner as direct mailings and telephone calls by issuing timely information and action alerts. Social media sites can be used to not only mobilize supporters through providing information about campaign events, but also as a means to interact with the public, though candidates may not desire time-intensive interactions with a lower degree of control over content (Stromer-Galley, 2006). However, judicial candidates may be more eager than other candidates to use new media due to the inexpensive nature of such communications.

Given the changes in the available means by which candidates can disseminate messages amongst the public and the dearth of knowledge regarding contemporary judicial campaign communications, the following research questions are advanced:

RQ2a: What campaign communication methods do judicial candidates use?

RQ2b: How effective do judges consider various campaign communications media?

RQ3: How do candidates select which campaign communication methods to use?

Campaign Messages

Judicial candidates have typically stressed their qualifications for office (e.g., education, legal experience, etc.) in campaign messages. Campaign promises or discussions of "hot button" issues has largely been absent from their campaigns as judicial elections are subject to speech regulations. Both the Code of Professional Responsibility, which outlines ethical behavior for practicing attorneys, and the American Bar Association's Model Code of Judicial Conduct (MCJC), which applies to the judiciary, guide candidates' behavior on the campaign trail. In the past decade, however, deregulation efforts have been successful; judicial candidates are now able to engage in (some forms of) speech similar to both legislative and executive candidates. The

following section examines these changes and their impact on contemporary judicial campaigns.

The Model Code of Judicial Conduct. In order to preserve the legitimacy of the judiciary, states have adopted regulations designed to guide would-be judges' campaign conduct. Following controversy over the activities of a federal judge, the American Bar Association (ABA) established the Canons of Judicial Ethics, a forerunner to the MCJC, in 1924. Although the Canons were initially a set of guidelines lacking legal recourse, states enacted legislation modeled after the ABA's Canons complete with sanctions for violators. The Canons were left untouched by the ABA until 1972, when the ABA drafted the MCJC, which was intentionally created so that states would pattern their own regulations based on it. The MCJC was revised in 1990 to provide explicit guidelines for both judges and judicial candidates alike (Carwile, 2007). The Code has since seen a raft of revisions; it was amended in 1997, 1999, 2003, 2007, and 2010 (American Bar Association, 2011). Although the majority of Canons deal with current judges, the MCJC has included a number of provisions concerning judicial candidates, including the now defunct Announce Clause, the Pledges or Promises Clause, the (Appear to) Commit Clause (which was combined with the Pledges or Promises Clause in 2003), the Misrepresentation Clause, and other regulations concerning partisan political activities and solicitation of campaign funds.

The Announce Clause. Since 1924, judicial candidates have been barred from announcing their views on disputed policy issues. The 1972 version of the MCJC contained a provision that prohibited candidates for judicial office from "[announcing] his or her views on disputed legal issues" ("Republican Party of Minnesota v. White,"

2002). This Clause was removed from the 1990 version of the MCJC, though not every state revised their regulations to match the updated MCJC. Minnesota's Announce Clause, maintained well after the 1990 version of the MCJC, led to a U.S. Supreme Court case that ultimately invalidated the regulation.

The Pledges or Promises Clause. The 1972 and 1990 versions of the MCJC prohibit judicial candidates from making "pledges or promises" related to their conduct in office aside from promising impartial performance. The 2003 version of the Code combined this Clause with the (Appear to) Commit Clause.

The (Appear to) Commit Clause. The (Appear to) Commit Clause, which replaced the Announce Clause, explicitly prohibited judicial candidates from making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court" (American Bar Association, 1990). This clause was combined with the Pledges or Promises Clause in 2003.

Misrepresentation Clause. According to the 2011 edition of the Code, candidates for judicial office are prohibited from "knowingly, or with reckless disregard for the truth, make any false or misleading statement" (American Bar Association, 2011). Previous versions of the MCJC specifically prohibited candidates from knowingly misrepresenting facts concerning themselves or opponents.

Partisan political activities. The ABA has had guidelines concerning judicial candidate's partisan political activities since 1924. The 2011 edition of the MCJC specifies that judicial candidates shall not: (a) "act as a leader in, or hold an office in, a political organization," (b) "make speeches on behalf of a political organization," (c)

"publicly endorse or oppose a candidate for any public office," (d) "solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office," (e) "attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office," (f) "publicly identify himself or herself as a candidate of a political organization," and (g) "seek, accept, or use endorsements from a political organization."

Solicitation of campaign funds. Under the MCJC, judicial candidates are prohibited from personally soliciting campaign funds. A candidate can, however, establish a campaign committee that can solicit contributions on the candidate's behalf.

A decade of deregulation. Although the MCJC stayed largely unchanged for several decades, states have revised their own regulations in the wake of a number of court battles over the Canons. The shortcomings of the Canons, as well as the legal challenges and changes, are discussed in the following sections.

Pre-White criticisms and challenges. Prior to the *Republican Party of Minnesota v. White* (2002) (discussed in the following section), several legal scholars (e.g., Burke, 1993; Carwile, 2007; Colman, 1993; Rowe, 1995; Snyder, 1987) speculated over the constitutionality of the Canons given how they restrict political speech, which has been traditionally highly valued in American society and protected by the courts. Aside from their legality, commentators question the practicality of the Canons. It is difficult for candidates to comply with several of the regulations, particularly in partisan elections as the mere act of associating oneself with a political organization gives the appearance of a candidate implicitly committing to specific politicized issues. Other regulations may not go far enough in their goal of protecting the image of the judiciary. Allowing candidates

to establish committees to raise campaign funds does little to protect the image of candidates as the public does not recognize a distinction between the candidate and the committee charged with the task of soliciting campaign contributions (Cameron, 2003).

Lastly, the Canons may unintentionally detract from democratic accountability. Critics often suggest the restrictions on judicial candidate speech are responsible for the failure of judicial elections (i.e., high rates of ballot roll-off, low levels of voter knowledge of the candidates, etc.). "Without judicial free speech," Stott (2009) writes, "the electorate cannot accurately choose the best candidate, and the purpose of the election is thwarted" (p. 481). Voters, critics argue, have a right to hear what a candidate believes is important. As Spargo (2005) notes,

> We as voters do not have the right to hear what a judicial candidate wants to say about why he or she wants to be a judge and what they would do if they were elected. We get the candidate's name, rank, and serial number, and maybe a photograph of them with their dog, or whatever or whoever they pose with, and that is the end of it. (p. 631)

Kiovsky (1986) offered one of the earliest critiques of campaign speech restrictions, suggesting that the regulations assume the public is "politically immature" and that public confidence in the judiciary is "too fragile to withstand" the type of speech found in other electoral contests.

These criticisms are not without evidence. Although the majority of judges (64%) are satisfied with the amount and type of restrictions on judicial campaign speech, nearly one in three feel as though there are "too many restrictions" (Rottman, 2002). Speech restrictions not only make it difficult for the candidate to connect to the electorate, but

they also limit the extent of news coverage judicial elections receive (Foley, 1995). Adding to this, the majority of judges across all levels of the judiciary report that the MCJC prevents judges from responding to unfair or misleading criticisms (Rottman, 2002).

Incumbent judges may actually prefer speech regulations out of self-interest as they prevent challengers from voicing dissent with the incumbent's previous judicial rulings or from stating that they would reach different conclusions in similar cases heard before the court (Layman, 2006). It comes as no surprise, then, that challengers are less likely to enter electoral contests in states that have regulations similar to the Announce Clause, the Pledges or Promises Clause, the (Appear to) Commit Clause, and regulations concerning partisan political activities (Peters, 2009).

Up until 1990, the Canons were largely unchallenged; however, a series of court cases culminated in a Supreme Court ruling that has opened the door for greater deregulation efforts. One of the first cases in a long line of deregulation efforts involved Florida's Announce Clause, which was found overly broad in 1990. A year later, courts in Arkansas and Kentucky found sections of their states' respective codes similarly violated candidates' First Amendment rights. Likewise, The U.S. Court of Appeals for the Seventh Circuit in *Buckley v. Illinois Judicial Inquiry Board* found that both Illinois's Announce Clause and Pledges or Promises Clause failed to strike an acceptable balance between a candidate's right to free speech and the public's interest in an impartial judiciary. However, not all courts have arrived at the same conclusion. The U.S. Court of Appeals for the Third Circuit upheld Pennsylvania's Announce Clause in *Stretton v. Disciplinary Board* (Besser, 2003). Although a number of cases have dealt with

individual state regulations concerning judicial candidate speech, the U.S. Supreme Court's decision in *White*, which invalidated Minnesota's version of the Announce Clause, has caused the most concern for supporters of the Canons.

The White decision. *White* stemmed from Gregory Wersal's campaigns for the Minnesota Supreme Court in 1996 and 1998. During his 1998 campaign, Wersal filed suit in Federal District Court, claiming that he was so fearful of violating the state's Announce Clause that he had no other option than to ignore questions from the media and the public. The Minnesota Republican Party joined in the suit, noting that due to the legal restrictions placed on Wersal, they were unable to learn his views and therefore unable to support or oppose his candidacy. Although the District Court held that the Announce Clause did not violate the First Amendment, the U.S. Supreme Court saw otherwise.

Minnesota's regulation was designed to serve a compelling public interest – judicial impartiality. However, the Court took issue with the lack of an adequate definition of "impartiality" (not only was a definition absent in the MCJC and Minnesota's Code of Judicial Conduct, the previous courts who heard the case also failed to provide a definition). The Court considered three potential definitions of impartiality (impartiality as the "lack of bias for or against a *party* before the court," impartiality as the "lack of preconception in favor of or against a particular *legal view*," and impartiality as "open mindedness") and found Minnesota's Announce Clause was overbroad or underinclusive at serving each definition of impartiality. Thus, the Court reasoned:

> …the announce clause prohibits a judicial candidate from stating his views on any specific nonfanciful legal question within the province of the court for which he is running … [The] announce clause both prohibits speech on the basis of its content and burdens a category of speech that is "at the core of our First Amendment freedoms" – speech about the qualifications of candidates for public office. ("Republican Party of Minnesota v. White," 2002, pp. 773-774)

Shockwaves from White. Professional and activist groups, such as the ABA and the Justice at Stake Campaign, have decried *White*, claiming it will provide the basis for deregulating judicial campaigns. By removing speech restrictions, they reason, judicial campaigns will become similar to the rough and tumble campaigns for high-ranking legislative and executive offices. As the former President of the ABA, Robert E. Hirshon, argued,

> [*White*] is a bad decision. It will open up a Pandora's box. We are now going to have judicial candidates running for office by announcing their position on particular issues. They will know that the voters will evaluate their performance in office on how closely their rulings comport with those positions. (Walsh, 2002, p. A10)

Their concerns are not without merit. Although *White* was specific to Minnesota's Announce Clause, "the broader message of the decision made clear that the States [sic] would need to ensure that their Codes of Judicial Conduct allowed sufficient latitude to protect the First Amendment rights of judicial candidates …" (Caufield, 2005, pp. 625-626). *White* has indeed paved the way for deregulation efforts; a number of courts have turned to the rationale presented in *White* for guidance in cases involving state

restrictions on judicial candidate speech. On remand, the Eighth Circuit en banc (sometimes referred to as *White II*) not only invalidated Minnesota's Announce Clause, but also the state's prohibitions on partisan activities and personal solicitation of campaign contributions.

Although *White* was a narrowly defined decision that only dealt with Minnesota's Announce Clause, states reacted by revising their own Codes. Missouri, Pennsylvania, Texas, North Carolina, Georgia, Ohio, Indiana, Kentucky, and Florida either revised their Codes or issued advisory opinions to clarify the *White* decision and discuss the implications for their own Codes (Caufield, 2005). Other states took the opportunity to further remove other canons. Borrowing from Eakins and Swenson (2007), states can be grouped into five categories based on their reaction to *White*: (a) noncompliance (i.e., maintained Announce Clause), (b) slow compliance (i.e., removed Announce Clause more than two years after *White*), (c) compliance (i.e., removed Announce Clause within two years after *White*), (d) limited expansion (i.e., removed only their (Appear to) Commit Clause or only their (Appear to) Commit Clause and Announce Clause), (e) expansion (i.e., removed Pledges or Promises Clause and/or (Appear to) Commit Clause), and (f) unresponsive (i.e., maintained (Appear to) Commit Clause or Pledges or Promises Clause) (see Table 3.1).

As Table 3.1 implies, courts have struggled with the constitutionality of campaign regulations in the wake of *White.* The U.S. Court of Appeals for the Eleventh Circuit invalidated two provisions (the Misrepresentation Clause and the prohibition of personally soliciting campaign contributions) in Georgia's Code of Judicial Conduct in *Weaver v. Bonner*. However, although the District Court in *Spargo v. New York State*

Table 3.1. States' Reactions to White.

Noncompliance	Slow Compliance	Compliance	Limited Expansion	Expansion	Unresponsive
Colorado	Iowa	Arizona	Florida	Georgia	Alabama
Montana	Missouri	Minnesota	North Dakota	Kentucky	Alaska
		Maryland	Nevada	North Carolina	Arkansas
		Pennsylvania	New Mexico		Idaho
		Texas	New York		Illinois
			Oklahoma		Indiana
			South Dakota		Kansas
			Wisconsin		Louisiana
					Maine
					Michigan
					Mississippi
					Nebraska
					New Hampshire
					Ohio
					Oregon
					Rhode Island
					South Carolina
					Tennessee
					Utah
					Vermont
					Washington
					West Virginia
					Wyoming

Note. Information and categories from Eakins and Swenson (2007)

Commission on Judicial Conduct initially found New York's regulations regarding a candidate's partisan political activity to be overly broad and unconstitutional, the U.S. Court of Appeals for the Second Circuit vacated and remanded the District Court's decision (Caufield, 2005). Courts in New York have upheld regulations concerning political conduct of judicial candidates and the Pledges or Promises Clause (Brody, 2004).

Aside from challenges from judicial candidates themselves, interest groups are also actively involved in changing regulations concerning judicial elections. The Family Trust Foundation, a conservative group based in Lexington, Kentucky, filed a lawsuit in Federal District Court over the constitutionality of the state's (Appear to) Commit Clause. The group had distributed an issues questionnaire to judicial candidates but found that most candidates declined to complete the questionnaire out of a concern that they would be violating Kentucky's Code of Judicial Conduct. The District Court ruled that the Clause was unconstitutional – a decision that was later upheld on appeal (Caufield, 2005).

Scholars have offered a number of predictions concerning the impact *White* will have on judicial elections. As a result of the potential for contentious elections and negative campaigns, the amount of qualified candidates who chose to run for judge might diminish. Voter turnout may also decline, as voters may not respond positively to aggressive, expensive judicial campaigns. However, few studies demonstrate the types of disastrous effects of *White* that reformers often advance. Bonneau and M.G. Hall (2009) found no evidence of fewer challengers in judicial contests following the *White* decision. Likewise, citizen participation has not declined, nor have campaign expenditures increased (at least in the two years following the decision). Quality challengers (i.e., challengers with previous judicial experience) are not less likely to toss their hats in the

ring for state supreme court justice following *White* (Bonneau, M.G. Hall, & Streb, 2011). However, these scholars admit that their findings are limited to the few election cycles following *White*. Their findings are also limited to the few research questions they sought to answer (Has electoral contestation and the caliber of candidates decreased since *White*? Have incumbents become more vulnerable? Has campaign spending increased? Has ballot roll-off increased?), which reflect only a minority of the concerns over *White*'s effects.

New-style judicial campaign messages. Although critics of *White* predict a deluge of controversial campaign speech, simply removing campaign speech regulations does not necessarily mean candidates will rush out and start engaging in previously prohibited speech. Laws are but one force that regulate human behavior; markets, architecture (through the physical burdens placed upon us through "real space" and all of its objects), and norms also influence human behavior (Lessig, 2006).

There are number of reasons to expect candidates to refrain from engaging in controversial speech. First, the culture of judicial campaigns is one that inherently curtails such campaign messages as voters expect different behavior from judicial candidates than they do from legislators and executives. Likewise, the culture of the legal community is one that promotes *professional* conduct. Law schools and bar associations instill particular values in the legal community that, at least for most judicial candidates, do not fade once the campaign begins. Second, some candidates may not understand what is now legally allowed in campaigns and may choose to err on the side of caution and avoid controversial speech. Lastly, candidates may perceive that the electorate is more attuned to traditional campaign speech focused on the candidate's qualifications for office.

Despite these reasons, the professionalization of contemporary judicial campaigns remains a concern. Campaign consultants are commonly criticized for encouraging and promoting negative campaign tactics. Francia and Herrnson's (2007) survey of 2,946 candidates for state and local offices (10% of whom ran for judicial office) found that candidates who hire professional campaign consultants are more likely to find negative campaign tactics acceptable, particularly if they are in uncompetitive contests. That said, few judicial candidates for lower office (25%) have paid campaign staff and most (62%) refrain from hiring campaign consultants (Arbour & McKenzie, 2010). It is unclear whether candidates in more recent elections turn to professionals for campaign advice or how candidates develop their campaign communications. Therefore, the following research question is put forward:

RQ4: How do candidates develop campaign messages?

Although some forms of judicial campaign speech are thought to decrease institutional legitimacy, empirical evidence is minimal and conflicting. To date, James Gibson's vignette experiments appear to be the only investigations undertaken to take on the task of testing the impact campaign speech has on the judiciary's legitimacy. Likewise, little is known regarding if and how candidates incorporate negative speech in their own campaigns.

Policy talk. Gibson (2008b) tested a number of experimental vignettes and their influence over Kentuckians' perceptions of the judiciary. Within each vignette, different aspects were manipulated, such as whether the candidate accepted or rejected campaign contributions, made policy statements, or used attack ads (see Appendix A for exact wording of vignettes). Although accepting campaign contributions from both litigants

and interest groups and using attack ads decreased the judiciary's institutional legitimacy, communications related to the candidate's policy views or specific policy commitments did not appear to influence the public's perception of the judiciary's legitimacy.

Gibson (2009) replicated this experiment using a nationally representative sample and found similar results: policy talk of any form did not detract from the judiciary's perceived legitimacy. Further analysis, however, revealed that policy talk *decreases* the judiciary's legitimacy in states that do not elect or retain judges through elections. Respondents with no experience with judicial campaigns are more likely to find both statements that reveal the candidate's views on policy and policy promises objectionable and therefore call into question the fairness and impartiality of the courts.

Although Gibson's work suggests that judicial candidates can speak their minds without significant consequences, the vignettes used by Gibson (2008b, 2009) may not accurately reflect *real* policy talk and commitments, thereby making the validity of the manipulations suspect. The key language used in the vignettes ("He promises that, if re-elected, he will decide [cases involving abortion, lawsuit abuse, and the use of the death penalty] in the way that most people in Kentucky/[State] want them decided.") is not consistent with the types of communications feared to detract from institutional legitimacy. The vignettes do not specify the candidate's particular views on these issues. This is entirely different from a candidate expressing her *specific* views on abortion (i.e., labeling herself "pro-choice" or "pro-life"). It is possible that if the manipulation had included such language, some respondents (particularly those with opposing views) would question the impartiality of the judge.

Gibson (2008a) addressed these concerns by revising the vignettes and testing them with another sample of Kentuckians (see Appendix A for the exact wording of the revised survey questions). Surprisingly, the majority of the study's participants with "cold feelings" toward abortion activists (51.4%) believed a judge who issues a statement saying the constitution grants abortion rights could rule in an abortion case in a fair and impartial manner. However, a judge who says, "I will change abortion law" was evaluated much more critically by respondents with "cold" and "warm" feelings toward pro-abortion activists (of which, only 35% and 36.9% respectively felt the judge could remain fair and impartial in an abortion case). Thus, a judge relaying her constitutional ideology is less threatening to the legitimacy of the judiciary than specific policy promises, leading Gibson to conclude, "…it seems that relatively small differences in campaign statements can have significant consequences for public assessments of judges and the judiciary" (p. 911).

General policy-related announcements may come dangerously close to policy commitments, which are still prohibited in many states. Securing desirable endorsements from political groups, such as the National Rifle Association, can be tricky as such groups routinely ask candidates policy-oriented questions that could run afoul of state regulations. A seemingly simple question such as, "As a judge, would you uphold the rights of gun owners?" asks candidates – beyond merely announcing their views – to commit to a particular viewpoint.

It is unclear as to whether candidates, across all levels of the judiciary, are focusing on issue positions. Prior to *White*, Abbe and Herrnson (2002) found issue positions were a component of many judicial campaigns in the 1998 elections (15.9% of

trial court campaigns and 21.7% of appellate and supreme court campaigns), though few candidates (8%) reported that such messages were the primary focus of their campaign. Following *White*, Arbour and McKenzie (2010) found candidates for lower courts in 2008 were far less concerned with emphasizing issue-based themes; a mere 5% of candidates included such campaign messages.

Aside from ascertaining how frequently candidates emphasize issue positions in their campaigns, it is also important to investigate *what* issues candidates stress. Weiss (2006) suggests the media encourage candidates to focus campaign messages on crime in response to public fears stoked by heavy media focus on violent crime. As television viewers, particularly heavy viewers, adopt the ultra-violent reality presented on the screen (Gerbner & Gross, 1976), judicial candidates must focus their campaigns on being "tough on crime" to gain traction with voters. Arbour and McKenzie (2011) found court administration issues or crime and sentencing issues were the predominant theme reported by 57% of lower court candidates in 2008.

Historically, candidates have preferred to focus on their own experience and qualifications rather than issue positions. Prior to *White*, candidates for state supreme court in 1996 reported that their campaigns focused on their qualifications for office, family values, endorsements, as well as crime (Minzner, 1999). The picture does not seem to have changed much in recent years. Candidates report that experience and qualifications for office were the dominant theme for over half (51%) of the lower court campaigns in the 2008 election cycle (Arbour & McKenzie, 2010). Depending on the election cycle, candidates may or may not be more willing to discuss controversial issues and issues related to crime. Therefore, the following research question is posed:

RQ5: How do judicial candidates address issue positions in their campaigns?

Negative campaigning. If maintaining the integrity of the judiciary is desirable, scholars should take note of negative campaigning as such ads have the potential to decrease the judiciary's legitimacy. When it came to evaluating attack ads that aired in 2006, Kentuckians took issue with one judicial campaign ad in particular, which concluded by asking, "Is he a judge, or just another politician?" Gibson (2008a) concluded this specific line of the ad is what set it apart from other attack ads:

> My suspicion is that this statement cues the respondents to think, 'This ad sounds like politics as usual, politics as I have seen in other political races, and exactly the sort of politics of which I disapprove' … The other ads may be caustic, but this ad seems to portray judges as run-of-the-mill politicians and therefore detracts from their impartiality. (p. 914)

The evidence suggests that most people are comfortable with some judicial campaign activity typically found in legislative or executive contests (e.g., general statements of policy positions, contrast ads), though there is some expectation that judicial candidates adhere to a higher ethical standard.

Attack ads are frequently sponsored by non-candidate groups. In 2012, 26% of ads purchased by outside groups and 21% of the ads purchased by political parties were negative in tone. Candidates themselves rarely engage in such campaigning; only 12% of ads purchased by candidates in 2012 were negative (Bannon et al., 2012). Caufield (2007) found the proportion of attack ads varied with the election cycle (in 2002, 20.8% of ads were attack ads, only 8.3% were in 2004). Francia and Herrnson's (2007) survey of 2,946 US Congressional and statewide candidates found a majority of candidates

thought it appropriate to bring up issues related to legal or financial infractions (e.g., failure to pay child support, an opponent's recent bankruptcy), though other issues (e.g., marital infidelity, cocaine or marijuana use as a youth) were deemed more inappropriate. Given these inconsistent findings and the lack of research related to the candidates' perspectives on such controversial campaign tactics, the following research question is advanced:

RQ6: What are judicial candidates' attitudes toward negative campaigning?

Consequences of Campaigning

Given the noisy, nasty, and costly nature of new-style judicial campaigns, democratic accountability may be hindered as qualified candidates may simply "drop out" of the pool of potential candidates (Schotland, 2002). Although Gibson's work examined the impact judicial campaign activity has on the public's perception of the legitimacy of the judiciary, no empirically based investigations could be located that examined the effect campaigning has on the candidates themselves.

Some candidates may find the "rough-and-tumble" world of judicial campaigns repellent but others may enjoy participating in largely deregulated campaigns as they allow candidates to communicate more effectively with the electorate. Judicial elections may be attractive to qualified candidates who are not afraid of public scrutiny; such candidates are no doubt a boon for democrats who favor a court held accountable by and to the public. Schultz (2006) suggests post-*White* judicial elections may actually inspire a "greater diversity of candidates" in judicial elections. How or why that may be the case is left unexplained, though.

Given the lack of systematic research concerning the ups and downs candidates experience while campaigning, and whether some candidates remove themselves from the pool of potential judges and why, the following research questions are advanced:

RQ7a: What aspects of the campaign do judicial candidates find rewarding?

RQ7b: What aspects of the campaign do judicial candidates find troubling?

Crafting a Better System

Scholars and organizations have proposed a number of reforms designed to curtail the ill effects of new-style judicial campaigns. Noticeably absent from reform efforts are measures aimed at regulating candidate speech. Efforts to further regulate judicial candidate speech are unlikely as "*White* is not going away; the current Court is virtually certain not to overrule it" (Brown, 2008, p. 1611). However, the sheer availability of a number of other proposals indicates the potential for a new generation of judicial campaign reforms. Potential reforms can be categorized as being voluntarist, informational, or structural in nature (Stern, 2008). The following section discusses some of the more popular reforms that have been proposed.

Voluntarist reforms. Not all reform proposals necessarily require the force of law to have a desired effect. As discussed previously in this chapter, law is but one source of behavioral influence. Two widely discussed reforms fall under the voluntarist category: voluntary campaign restrictions and public financing.

***Voluntary campaign agreements*.** Rather than relying on prohibitions on judicial candidate speech, candidates could reach voluntary agreements with one another to conduct their campaigns in a manner consistent with the expectations of the judiciary. Judicial oversight committees (discussed later in this section) could ask judicial

candidates to voluntarily commit to conducting a fair campaign that "reflects the dignity and integrity of judicial office and the independence of the judiciary" (Fortune & White, 2008, p. 236). Judges are nearly unanimous in their support for such voluntary measures; a recent survey showed that 93% of current judges support such efforts (Rottman, 2002). Support for this voluntary reform may have changed following the *White* decision. A more recent, post-*White* study is necessary to determine the answer given the potential for more volatile campaign communications.

Public financing. Public financing has also been suggested as a possible voluntary reform (candidates cannot be forced to accept public funds for their campaigns), going back at least four decades and counting (Beechen, 1974). Some states, such as North Carolina, have implemented campaign finance systems designed to reduce the corrupting power of campaign donors by making public funds available to candidates. Judicial campaigns in North Carolina are funded through taxpayer contributions and lawyer fees. Although the initial year was wrought with problems (the campaign fund was underfunded), proposals have been issued to strengthen the effectiveness of public financing (Bend, 2005).

There are a number of advantages to making public funds available to judicial candidates. Aside from enhancing judicial independence, public financing could promote democratic accountability by allowing candidates who lack the necessary financial resources to enter electoral contests. Candidates could focus their campaigns on informing the public of their qualifications for office rather than devoting substantial time and effort soliciting campaign donors. Although some suggest incumbents would benefit from public financing systems that set limits on the amount of funding available to

candidates, such reforms do not inherently favor incumbents. As Goldberg (2003) argues, the *real* incumbent advantage rests with raising funds; in a publicly financed contest, the ability to connect to a wide network of campaign donors is irrelevant.

Public financing does have some limitations, however. First, public funds do not reduce the problems associated with the growing involvement of non-candidate groups, who could continue to dominate judicial elections. Wealthy campaign donors can still have a substantial influence over judicial elections as they can divert campaign contributions to PAC groups. Aside from having no discernible effect on the involvement of non-candidate groups, the logistics of public financing can be troublesome. Some jurisdictions are more costly than others and some are inherently more competitive than others; creating a "one-size fits all" campaign financing system would raise concerns over the fairness and effectiveness of such policies.

Although campaign finance is a concern shared by judges and the public, not everyone agrees on public financing. Abbe and Herrnson (2003) find that most judicial candidates from 1996 through 2000 were concerned about the manner in which campaigns are financed, but they were divided when it came to the possibility of making public funds available to candidates. A number of judges felt that the current campaign finance system was either broken and needed to be replaced (23.7%) or that it had problems and needed to be changed (48.4%). A mere 6.1% of judges felt that the system should not be changed. An overwhelming majority (62.4%) felt that campaign costs discouraged qualified candidates from running for office. However, when it came to public funding, though many (48.7%) felt that such funding would improve elections, there were stark differences between Democrats and Republicans (66% of Democrats

said it would *improve* elections whereas 57% of Republicans said public funding would actually *worsen* elections). However, given the significant increase in campaign expenditures over the past decade, the opinions of recent candidates may differ. Public financing systems may have more support from candidates than it did prior to *White*.

Informational reforms. Aside from voluntary reform proposals, a number of reforms have been suggested in order to provide more solid, accurate, and useful information to the public. Such proposals include voter guides, ballot labels, and campaign oversight committees.

Voter guides. Distributing voter guides and pamphlets is a popular reform proposal. Guides would contain information about the candidates, which would ensure that voters have access to at least *some* information about candidates beyond the scant news media coverage and paid campaign advertisements from candidates and non-candidate groups. Guides could contain candidate-provided information, such as a statement of qualifications. Guides could be mailed to voters or provided through online sites, at polling places, or other venues. Aside from candidate-provided information, voter guides could also include campaign finance reports, which could provide details regarding candidates' campaign contributions.

There is strong public support for voter guides; at least one survey showed that they were the preferred source of information about judicial candidates (Lovrich & Sheldon, 1983). Judges are not necessarily as enthusiastic (Rottman, 2002). This may be due to the perceived lack of control over the content of voter guides. However, given the potential for low-cost, widespread availability through online distribution, candidates may be more receptive toward voter guides.

Ballot labels. Including information on the ballot itself, such as incumbency status and previous legal experience (through inclusion of occupational labels), can act as a powerful source of information for voters in judicial elections. Ballot labels can also prove beneficial to candidates, even more so than campaign spending, newspaper or bar endorsements, and inclusion in the voters' pamphlet (Dubois, 1984). However, most ballots simply list the candidates' names (party affiliations are included in partisan races). Candidates' attitudes towards ballot labels remain unknown.

Campaign oversight committees. Some states have responded to the deregulation of judicial campaigns by forming committees designed to promote honorable judicial campaigns. For example, in 2006, the Washington Committee for Ethical Judicial Campaigns was formed through a coalition of the American Judicature Society, the ABA Standing Committee on Judicial Independence, the Constitution Project, the Justice at Stake Campaign, the League of Women Voters, and the National Center for State Courts. This nonpartisan, volunteer organization is focused on providing information to the press and the public. Although the Committee lacks legal authority, they can ask candidates to pull offensive ads and they can bring to light unethical campaign conduct through issuing public statements, thereby acting as a deterrent (Eckley, 2008).

Based on the suggestions of Salokar (2007), committees could also host workshops designed to communicate the ethics of campaigning. Advisory boards could help candidates by providing specific advice to candidates on how to address issues that arise on the campaign trail. Committees could also conduct judicial performance evaluations that could be made available to the public, thereby improving the public's knowledge of the performance of incumbent judges. Judges could be evaluated based on

different metrics related to the judge's legal ability, integrity and impartiality, written and oral communication skills, professionalism and temperament, and administrative capabilities, as suggested by the ABA. States could determine what measures would most adequately assess these criteria (for examples of how states have done so, see White, 2009).

Relative to other reform proposals, the public and judges have been less supportive of independent committees (Rottman, 2002), although the last decade has perhaps shifted the prevailing opinion.

Structural reforms. Lastly, a number of structural reforms have been proposed over the years. Proponents of structural reforms argue that states could revise aspects of judicial positions and elections.

Recusal and disqualification rules. The right to have one's case heard by an unbiased, impartial judge is rooted in the U.S. Constitution and has been upheld by the U.S. Supreme Court. Judicial bias is such a serious concern that if proven it requires an automatic reversal. Judges who may appear to be biased are charged with the responsibility to disqualify themselves from the case, although litigants can move to have the judge disqualified as well. Following a decade of some of the costliest campaigns (funded in part by parties that come before the court), many have called for stricter recusal and disqualification standards.

Current recusal and disqualification rules may be ineffective in light of modern judicial campaigns. Gibson and Caldeira (2012) show that although recusal does indeed improve public support for the judiciary in cases where there is a conflict of interest, it does not restore it the level of support when there is no conflict of interest. Also, without

mandatory disclosure rules, moving to have a judge disqualified from a case is difficult, especially when campaign donations are from interest groups (e.g., PACs) supported through anonymous donors (Carrington, 1998). Stott (2009) suggests strengthening recusal rules by assigning recusal motions to other judges. This proposed reform would remove the current system of self-recusal, which relies on judges to acknowledge a need to recuse themselves.

Reformers also suggest judges who announce their views on an issue or accept contributions from a party step aside in cases that involve that issue or party in order to ensure the appearance of impartiality. However, how one conceives of judicial impartiality determines whether disqualification in these cases is necessary or practical. If a judge presides over a case involving an issue that she has written about in law review journals, does that provide the grounds for disqualification? A judge who previously challenged a precedent while teaching a law school course might also raise some eyebrows if the judge hears a case involving that same issue. In both cases, judges would have a difficult time keeping an "open mind" (to borrow from one of the Court's proposed definitions of "impartiality" in *White*). The same would be true for a judge hearing a case involving an issue that he had previously ruled on; he is unlikely to radically depart from his previous ruling. The administrative burdens of locating *truly* impartial judges may simply prove too great to meet the needs of this reform.

Aside from issues of necessity and practicality, stricter recusal rules may actually undermine democratic values. If a judge is elected based on his stances on issues, but is then forced to recuse himself when a case comes before the court that deals with one or more of those issues, the people are denied their choice: their right to know a judge's

position on an issue is useless if that judge is barred from ever ruling on cases that involve that issue. An outspoken, elected judge may find herself sitting out of a number cases, thereby depriving voters of their selected judge. This judge may find her chances of reelection difficult to say the least, as issue groups would no doubt highlight the judge's absences (Aabramson & Lee, 2004).

In other cases, stricter recusal rules may actually impede impartial justice. For instance, requiring judges to recuse themselves in cases where a party before the court contributed significant funds sounds reasonable on its face, but as Chemerinsky (1998) notes, there are some unintended consequences with this proposal. Attorneys may find it beneficial to contribute significant funds to undesirable judges so that they never have to face them in the courtroom. Attorneys would actually be discouraged from contributing any significant funds to judges they favor as those judges would automatically be disqualified from cases they bring before the court.

Regulating non-candidate groups. Non-candidate groups are increasingly involved in elections for appellate and supreme court judgeships (Arbour & McKenzie, 2010) as they recognize how influential these levels of the judiciary can be in the policy-making process. Commenting on the 1990 elections in Ohio, an AFL-CIO official noted, "We figured out a long time ago that it's easier to elect seven judges than to elect 132 legislators" (Heagarty, 2002, p. 20). Abbe and Herrnson (2002) show that contests for lower courts between 1996 and 1998 did see some low-level involvement on behalf of local parties, trial lawyers, and labor groups, but few candidates reported any involvement from business, civil rights, or abortion groups.

Interest groups have had a long, controversial history in judicial elections. Champagne (2001) argues, “they are essential to the functioning of a pluralist democracy;” (pp. 1391-1392) however, they do present a number of issues. Although they are often a source of funding for candidates and can help communicate a candidate’s qualifications for office, they hold a distinct advantage in that they are largely unregulated and have access to larger sources of capital. The growth in national-level interest groups over the last century has sparked concern as such groups depend on candidates to fulfill their agendas and candidates rely on interest groups for campaign support.

Aside from providing campaign funds, interest groups frequently broadcast campaign communications independently from candidates. Non-candidate groups paid for nearly half (49%) of the ads in the 2000 judicial elections (Champagne, 2002b). Since then, groups have dominated the airwaves; 61% of the ads in 2012 were purchased by non-candidate groups (Bannon et al., 2012).

Although their expenditures may be a boon for candidates they support, they can also detract from the focus of the candidate’s campaign. Candidates may find themselves at odds with “supportive” interest groups who use distasteful or unethical tactics. Although groups are not directly a part of the campaign, voters are likely to perceive some association between the quiet candidate and the mud slinging interest group.

Although interest groups have the potential to fulfill democratic ideals, the communications environment may not be adequate to facilitate the “marketplace of ideas.” Interest groups may effectively co-opt elections; as Goldberger (2003) notes:

> … an extremely wealthy interest group has the enhanced power to change minds and to change votes when it can inundate an election campaign with immense quantities of reasonably persuasive communication that overwhelm the communications of others. In such an extreme situation, the competing message of a comparatively impecunious adversary is much less likely to be heard. It will be communicated far less frequently and heard by fewer listeners. (p. 13)

National-level organizations can easily co-opt state elections. After the Iowa Supreme Court extended marriage rights to same-sex couples in *Varnum v. Brien*, large, national-level interest groups, including the National Organization for Marriage and the American Family Association, funded massive media campaigns marked by misleading advertisements, which suggested that judges had "imposed their own values," that they had "legislated from the bench" and that the foundation of American life was in peril due to "activist judges." In the following election cycle, three of the Iowa justices failed to receive enough votes to be retained and were ousted from office as a result. As judges are prohibited from discussing previous rulings, the justices removed from office were unable to counter the messages flooding the market from national organizations.

Political parties are also active in judicial campaigns, in both partisan and non-partisan elections. Such involvement may be problematic as "judges," Streb (2007a) writes, "are expected to be above politics. When a judge puts on her robe and walks into a courtroom, she is not a Democrat or Republican; she is an impartial interpreter of the law" (p. 96). Even though nonpartisan elections were the answer to judicial elections dominated by political parties, partisan politics seem to find their way into electoral contests. Although parties take a more active role in partisan contests, they actively

recruit candidates in non-partisan elections, as well as arrange fundraising events, contribute money to candidates, distribute posters and/or yard signs, coordinate with candidate campaign organizations, endorse candidates, conduct "get out the vote" efforts, and organize campaign events, door-to-door canvassing efforts, and telephone campaigns (Streb, 2007a).

Non-candidate groups have been able to take such a prevalent presence in elections due to the express advocacy standard developed in *Buckley v.Valeo*. Whereas express advocacy is subject to stricter government regulations, issue advertising is not. Ads that express advocacy include language such as, "Vote for candidate x" or "Vote against candidate y." Simply removing this type of language magically transforms the ad into an issue ad and reduces the government's ability to regulate it. So far, proposed legislation to limit third party involvement in elections has yet to gain legal ground as such proposals have failed to advance a valid public interest, be narrowly tailored, or avoid vagueness (Baran, 2002).

However, a number of proposals remain on the table. Goldberger (2003) suggests limiting the amount of expenditures from non-candidates, thereby inhibiting PACs, wealthy speakers, or other non-candidates from essentially taking over an election. The express advocacy standard could be replaced by one that accounts for interest group advertising, most of which does not explicitly advocate for or against a candidate but nonetheless influences the outcome of an election. This would be a difficult, if not impossible, task as such revisions would require overturning previous U.S. Supreme Court decisions.

Campaign finance reform. Aside from making public funds available to judicial candidates, states could also reform campaign financing by limiting campaign contributions and campaign expenditures, as well as enacting stronger disclosure rules.

Whereas Grannis (1987) describes recusal as the "pound of cure," the "ounce of prevention" she suggests lies with regulating campaign contributions. Limiting contribution amounts could reduce the influence donors have over judges. However, contribution limits that restrict individual contributions and fail to limit aggregate contributions reduce the effective power regulations have at ensuring judicial independence from campaign donors. Larger law firms could come out in droves with large donations, whereas smaller firms would be capped at a smaller amount. Although contribution limits would increase judicial independence, they would diminish democratic accountability. Challengers, particularly minorities and women, are unlikely to have more connections to potential donors compared to incumbents. Lastly, although both judges and the public at large are supportive of some campaign finance reform proposals (i.e., disclosure), there is less support for limiting campaign donations (Rottman, 2002).

More specifically, attorney contributions could be prohibited or limited, thereby reducing their influence over elected judges. An outright prohibition on attorney contributions, though, would hinder democratic ideals as candidates rely on these donors, who are typically more knowledgeable about candidates for judicial office. On the other hand, as Barnhizer (2001) suggests, attorney contributions could be pooled together in a collective fund made available to all judicial candidates in an election.

Limiting campaign expenditures could limit the potential for all out negative campaigns waged through paid media. However, limiting a candidate's expenditures decreases the effectiveness of a challenger's campaign as challengers receive a higher rate of return on campaign expenditures compared to incumbents (Bonneau, 2007b; Bonneau & Cann, 2011). Voluntary limits, as suggested by Longan (2005), may also be advisable, though it is unknown as to whether expecting candidates to come to a voluntary agreement on campaign expenditure limits is realistic.

Stricter disclosure rules have been suggested, as current regulations are limited because complete disclosure is not required. Candidates can simply report donations from 527s and 501(c)(4)s ("stealth" PACs) without having to identify individual contributors to such groups. Stronger disclosure rules could promote the appearance of judicial impartiality as the public would be made aware of who contributed to the judge's campaign, thereby pressuring judges to recuse themselves when significant contributors come before the court or to refuse contributions from some sources.

Candidate speech. However unlikely, speech regulations concerning judicial candidate speech could be further refined and imposed. Whether judicial candidates would favor such reforms is unknown, though given the criticism of *White* from the legal community, it is possible that candidates would favor a return to regulation.

Judicial selection. Aside from changes in election policy, states can adopt entirely different selection systems; however, efforts to adopt the merit plan or appointive selection systems have been unsuccessful. Calls for such reform have existed since the early 20th century, and yet 43 states choose to select and/or retain some or all of their

judges through popular election. Although the public does not regularly exercise it, they enjoy their right to vote for judges and are unlikely to give up that right (Rottman, 2002).

States that elect their judges can, however, choose between partisan and nonpartisan contests to resolve some of the issues with popular selection without the public giving up their right to vote. Partisan elections may be a possible solution to some problems with judicial elections, namely maintaining a knowledgeable voter population capable of voting (as voters glean significant information about candidates based party affiliation). Although not without their own issues (e.g., ballot roll-off), nonpartisan elections could reduce (although not eliminate) the unwanted involvement of non-candidate groups and the appearance of "party politics."

As the past few years have seen the rise of new-style judicial campaigns, it is unknown as to what reforms (if any) judicial candidates support. Therefore, the following research question is advanced:

RQ7: How do judicial candidates believe judicial elections can be improved?

The proceeding chapter describes the methods used to address the research questions advanced in this chapter.

Chapter Four

Methods

In order to assess the research questions posed in this investigation, both quantitative and qualitative methods were used. Mixed methods are appropriate in this case as they provide multiple ways of approaching and understanding the changing nature of judicial campaigns and elections. As Tashakkori and Teddlie (2003) note, mixed methods research can answer questions that some methods, when used on their own, simply cannot. Combining methods to answer research questions also provides the opportunity for presenting a greater diversity of views.

Mixed methods is not necessarily a new approach, though it is controversial in some circles. Mixing methods traditionally used by positivists with methods used by interpretivists is often met with concern by some scholars who consider the metatheoretical assumptions of the two paradigms as incompatible. Others have enthusiastically greeted the blurring of boundaries between paradigms. Denzin and Lincoln (2000) note the "great potential for interweaving of viewpoints for the incorporation of multiple perspectives" (p. 167). Roth and Mehta (2002) similarly argue that through combining methods that seek out subjective realities and attempt to approximate an objective truth, the researcher can shed a whole new light on the phenomenon of study. Lindlof and Taylor (2011) note that some forms of quantitative data can "add precision to design efforts at the front end of a [qualitative] project" (p. 119).

To assess the research questions advanced in Chapter Three, a survey of 2012 U.S. judicial candidates was undertaken. To expand upon survey findings and to better

understand the experience of running for judicial office, depth interviews with candidates were carried out upon the conclusion of the survey with selected survey respondents.

Quantitative Study

Sample

Participant characteristics. In order to be eligible for participation in this study, participants must have run for judicial office in 2012. In contrast with some other studies (Herrnson, 1994) campaign staff members, including managers and others, were excluded from participating in this study. Survey participant demographics (gender, age, income, ethnicity, race, and the state in which the candidate ran for office) are summarized in Tables 4.1 and 4.2. Data related to the survey participants' political profile (office sought, whether the respondent participated in a retention election, campaign budget, incumbency and electoral experience, electoral competition and success, and partisanship) are reported in Tables 4.3 through 4.8.

Sampling procedure. Candidates for judicial office in 2012 were identified through the secretary of state or board of elections websites for each state where judges are elected to office or face retention elections. Contact information (e-mail addresses and physical mailing addresses), if provided, was collected. In cases where contact information could not be located, the researcher queried online state bar lawyer databases. If contact information could not be located through either of these methods, the researcher attempted to locate contact information through an online search engine (Google).

This procedure identified 3,945 candidates. E-mail addresses were located for 2,111 identified candidates (53.5%). Physical mailing addresses were located for another

Table 4.1. Survey Participant Demographics: Sex, Age, Income, Ethnicity, and Race.

	n	%
Gender		
Male	279	59.1
Female	96	20.3
Unspecified	97	20.6
Age		
18-29 years old	1	0.2
30-39 years old	18	3.8
40-49 years old	100	21.2
50-59 years old	153	32.4
60-69 years old	98	20.8
70 years or older	6	1.3
Unspecified	96	20.3
Income		
Less than $20,000	1	0.2
$20,000 to $49,999	6	1.3
$50,000 to $99,999	45	9.5
$100,000 to $249,999	239	50.6
$250,000 to $499,999	47	10.0
$500,000 to $999,999	3	0.6
$1,000,000 or more	1	0.2
Unspecified	130	27.6
Ethnicity		
Latino, Hispanic, Spanish	19	4.0
Not Latino, Hispanic, Spanish	342	72.5
Unspecified	111	22.3
Race		
White or Caucasian	330	69.9
Black or African-American	19	4.0
Asian	2	0.4
Native American or Alaska Native	1	0.2
Native Hawaiian or other Pacific Islander	1	0.2
Other	2	0.4
Unspecified	117	24.8

1,563 identified candidates (39.6%). Contact information could not be found in 271 cases (6.9%).

Identified candidates were contacted in two phases. First, candidates were contacted via e-mail to participate in an online survey hosted by Qualtrics. A total of

Table 4.2. Survey Participant Demographics: State in which Participant Ran for Election.

	n	%
Alabama	19	4.0
Alaska	1	0.2
Arizona	1	0.2
Arkansas	5	1.1
California	18	3.8
Colorado	7	1.5
Florida	28	5.9
Georgia	7	1.5
Idaho	3	0.6
Illinois	8	1.7
Indiana	8	1.7
Iowa	1	0.2
Kansas	7	1.5
Kentucky	1	0.2
Louisiana	1	0.2
Maryland	5	1.1
Michigan	45	9.5
Minnesota	8	1.7
Missouri	5	1.1
Montana	5	1.1
Nebraska	2	0.4
Nevada	7	1.5
New Mexico	4	0.8
New York	19	4.0
North Carolina	12	2.5
North Dakota	4	0.8
Ohio	24	5.1
Oregon	8	1.7
Texas	28	5.9
Utah	1	0.2
Washington	17	3.6
West Virginia	4	0.8
Wisconsin	17	3.6
Wyoming	1	0.2
Unspecified	141	29.9

Table 4.3. Survey Participant Political Profile: Office Sought.

	n	%
Supreme Court	17	3.6
Appellate Court	46	9.7
Trial Court	296	62.7
Other	21	4.4
Unspecified	92	19.5

Table 4.4. Survey Participant Political Profile: Participated in a Retention Election?

	n	%
Yes	71	15.0
No	307	65.0
Unspecified	94	19.9

2,111 e-mail invitations were sent on January 14, 2013, each containing a hyperlink to the online survey. Based on the suggestion made by Dillman, Smyth, and Christian (2009), a follow up reminder to complete the survey was distributed a month later on February 11, 2013. Responses were received from 391 contacts (18.5%), though 15 did not go beyond the online survey welcome screen. In addition, three reported not being a candidate for judicial office in 2012. These 18 cases have been removed from all analyses and reports.

Identified candidates for whom physical addresses could be located but not an e-mail address (n = 1,563) were considered in the second phase of the survey. Of these candidates, 26 were identified as supreme court candidates, 77 were identified as appellate court candidates, and 1,460 were identified as trial court candidates. Given the small number of candidates for higher levels of judicial office, all supreme and appellate court candidates from this population subset were contacted by mail to participate in a mail survey (see Appendix B for survey materials). Trial court candidates in this subset who faced competition in their elections, as identified through election data provided by

Table 4.5. Survey Participant Political Profile: Campaign Budget.

	n	%
Less than $10,000	132	28.0
$10,001 to $25,000	77	16.3
$25,001 to $50,000	72	15.3
$50,001 to $100,000	51	10.8
$100,001 to $500,000	46	9.7
$500,001 to $1,000,000	3	0.6
More than $1,000,000	1	0.2
Unspecified	90	19.0

Table 4.6. Survey Participant Political Profile: Incumbency and Electoral Experience.*

	n	%
Incumbency status		
Incumbent	106	26.4
Non-Incumbent	190	47.4
Unspecified	105	26.2
Incumbent participated in election?**		
Yes	67	24.0
No	124	44.4
Unspecified	88	31.5
Held elective public office?**		
Yes	45	16.1
No	147	52.5
Unspecified	88	31.4

* Survey participants who reported participating in a retention election (*n* = 71) were excluded from these items.
** Survey participants who reported being the incumbent (*n* = 106) were excluded from this item.

Judgepedia.org, (*n* = 466) were also solicited to participate in the survey. An invitation to participate in the survey, along with a physical copy of the survey and a self-addressed stamped envelope, were mailed to candidates in May 2013. Of the 569 surveys that were mailed, 20 were returned due to an incorrect mailing address and 3 others were returned as they were partially destroyed in transit. Removing the 23 surveys that did not reach their destinations, a total of 99 mail surveys were received, for a response rate of 18.1%.

Table 4.7. Survey Participant Political Profile: Electoral Competition and Success.

	n	%
Competed in the primary election?*		
Yes	189	47.1
No	110	27.4
Unspecified	102	25.4
Number of candidates on the primary election ballot**		
1	29	15.3
2	59	31.2
3	46	24.3
4	20	10.6
5	15	7.9
6 or more	18	9.5
Unspecified	2	1.1
Competed in the general election?**		
Yes	191	47.6
No	106	26.4
Unspecified	104	25.9
Number of candidates on the general election ballot***		
1	31	16.2
2	125	65.4
3	5	2.6
4	5	2.6
5	1	0.5
6 or more	22	11.5
Unspecified	2	1.0
Elected?		
Yes	203	43.0
No	176	37.3
Unspecified	93	19.7

* Survey participants who reported participating in a retention election (*n* = 71) were excluded from this item.

** Only survey participants who reported participating in the primary election (*n* = 189) were included in this item.

*** Only survey participants who reported participating in the general election (*n* = 191) were included in this item.

Table 4.8. Survey Participant Political Profile: Partisanship.

	n	%
Office sought partisan or non-partisan?*		
Partisan	97	24.2
Non-partisan	201	50.1
Unspecified	103	25.7
Sought party endorsement from:**		
Constitution Party	--	--
Democratic Party	37	38.1
Green Party	3	3.1
Libertarian Party	--	--
Republican Party	30	30.9
Other Party	11	11.3
Received party endorsement from:**		
Constitution Party	--	--
Democratic Party	40	41.2
Green Party	2	2.1
Libertarian Party	--	--
Republican Party	32	33.0
Other Party	11	11.3

* Survey participants who reported participating in a retention election (*n* = 71) were excluded from this item.
** Only survey participants who reported participating in a partisan election (*n* = 97) were included in this item. Participants were able to select multiple response options.

Overall, 2,657 survey invitations were delivered through online or physical means. A total of 490 responses were received, for an overall response rate of 18.4%. Taking the overall population of identified candidates (*n* = 3,945) into account, nearly 1 out of 8 (12.2%) judicial candidates responded to our invitation.

There are some reasons why the survey response was relatively low. First, as Dillman et al. (2009) note, we are living in "turbulent times" when it comes to survey methodology. Access is becoming more difficult and people are less willing to respond to unsolicited communications. Scott Keeter, the survey director for the Pew Research Center and president of the American Association for Public Opinion Research, notes that Pew's survey responses have taken a dive: whereas surveys conducted in 1997 saw a

response rate of 36%, response rates for surveys conducted in 2011 were a mere 11% (Peltz, 2012).

Second, it is possible that not all contact information collected was accurate. Some forms of contact may no longer be in use following the conclusion of the election. A campaign e-mail address, such as "smith4judge2011@gmail.com," may not have been checked after the conclusion of the election. Some e-mail invitations may have been received by campaign personnel and not forwarded on to the candidates. Contact information gleaned from state bar databases may not have been current.

Lastly, some candidates may have been concerned about privacy and confidentiality issues with responding to surveys that ask potentially sensitive questions.

Measures

The measures described here have been used in a larger research program that involves an ongoing survey of candidates who ran for U.S. elective office. Several of these measures have been used, adapted, or derived from previous studies (Hertog & Human, 2008; Hertog, Human, & Zuercher, 2011; Hertog & Zuercher, 2012).

News media. A battery of survey items dealt with the participants' views of the media, including the amount and quality of news coverage, effort to generate news coverage, relationships with the news media, and news media performance.

Extent of coverage. Participants were asked, "Which of the following best characterizes the extent of coverage your campaign received from the traditional news media?" Response options included: (a) None (no mention of your campaign), (b) Minimal (no more than occasional mention), (c) Limited (monthly mention or less with one to two occasions of moderate coverage during the campaign), (d) Moderate

(biweekly coverage with perhaps one or two significant stories during the campaign, (e) Significant (stories appearing most weeks, with lengthy treatment on several occasions during the campaign, or (f) Extensive (several stories per week, some going into great depth).

Participants were also asked about any coverage they might have received from non-traditional media sources. This survey item asked candidates to "Please indicate, which, if any of the following non-traditional media sources provided significant attention to your campaign" and provided the following response options: (a) Talk radio, (b) Political blogs, (c) Social media (Facebook, Twitter, Myspace), (d) Other (with a text entry option), and (e) I did not receive attention from these sources.

Lastly, participants were asked about their expectations of receiving news coverage: "Did you expect your contest to receive significant news coverage?" (Yes/No).

Type of coverage. Participants who reported receiving limited, moderate, significant, or extensive coverage were asked: "Below are a number of statements scholars and critics have made about news coverage of elections. Please mark whether you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, or strongly disagree that each statement applies to your electoral contest." Statements included: (a) News coverage of my electoral contest was inadequate, (b) News coverage of my electoral contest focused on the important issues, (c) News coverage of my electoral contest focused on its most sensational features, (d) News coverage of my electoral contest was biased in favor of my opposition, (e) News coverage of my electoral contest was biased in my favor, (f) News coverage of my electoral contest was accurate, (g) News coverage of my electoral contest focused too much on candidate campaign

strategies, and (h) News coverage of my electoral contest focused too much on who was leading or behind.

System/candidate effort. Two survey items addressed the effort taken by non-candidate groups/individuals and candidates to allow for the communication of the candidate's views with the public. Participants were asked, "For each of the following activities your campaign engaged in, please indicate all actors who initiated at least one communication event. For example, if you were on radio talk shows three times and two were set up by your campaign while the third was set up by the host, you would mark the columns for 'you or your campaign organization' and for 'media/news organization' on the appropriate row." Communication events included: (a) Television talk show, (b) Radio talk show, (c) Public speeches, (d) Broadcast debates, (e) Public debates that were not broadcast, (f) Provide an interview to a journalist, (g) Speak to an editorial board, (h) Address a community group, and (i) Fill out an issues questionnaire. Participants could affirm whether the following groups/individuals initiated at least one communication event: (a) Media/News organization, (b) A community, business, or activist group, (c) A political party, (d) You or your campaign organization, (e) An opponent, or (f) Some other individual or group.

For those communication events that participants did not engage in, they were asked: "For each of the activities you indicated that your campaign did not engage in, please indicate which, if any, of the following groups requested that you engage in the activity." The same actors as the previous item were listed, but only for the events the candidate had not participated in.

Media relationship. One item dealt with the candidate's relationship with the news media: "Please rate your relationship with the news media during your campaign" (Very positive/Somewhat positive/Neither positive nor negative/Somewhat negative/Very negative).

Media performance. One item asked participants to evaluate the news media: "On a scale from A to F, please rate the overall news media performance with regard to coverage of the electoral contest in which you participated" (A/B/C/D/F).

Campaign communication methods. Participants were asked about not only the campaign communication methods that they used, but also their perceived effectiveness at disseminating their messages to potential voters.

Communication methods used. First, participants were asked, "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign." Participants could respond as to whether they used the following methods: (a) Paid television advertising, (b) Paid radio advertising, (c) Paid newspaper advertising, (d) Paid outdoor advertising, (e) Include a media coordinator or press secretary on staff, (f) Sent out press releases, (g) Scheduled press conferences, (h) Submitted OpEd pieces or letters to the editor, (i) Attended news events or public forums, (j) Direct mail, (k) Telephone, (l) Yard signs, (m) Personal canvassing (door-to-door), (n) Campaign staff canvassing (door-to-door), (o) Campaign literature/brochures distribution, (p) Campaign website/blog, (q) E-mail, (r) Social media online such as Facebook or Twitter, (s) Television talk show, (t) Radio talk show, (u) Public speeches, (v) Broadcast debates, (w) Public debates that were not broadcast, (x) Provide an interview to a

journalist, (y) Speak to an editorial board, (z) Address a community group, (aa) Fill out an issues questionnaire and (bb) Other (with a text entry option).

Effectiveness of communication methods. Participants were then asked about the effectiveness (Very effective/Somewhat effective/Not very effective) of campaign communication methods used in relation to disseminating their message to potential voters.

Campaign professionalism. Campaign professionalism was assessed by using a measure of campaign professionalism developed by Francia and Herrnson (2007). First, participants were asked, "Did you hire at least one paid professional for your campaign?" Those who responded in the affirmative were then asked if they relied mostly on salaried staff or paid consultants for any of the following campaign activities: (a) Campaign management, (b) Media advertising, (c) Press relations, (d) Issue or opposition research, (e) Polling, (f) Fundraising, (g) Direct mail, (h) Mass telephone calling, (i) Get-out-the-vote activities, (j) Legal advice, (k) Accounting, and (l) I did not rely mostly on salaried staff or paid consultants for any of these activities. Following Francia and Herrnson's measure, those who relied on paid staff for at least one of those activities (a-k) are considered to have a "professionalized campaign."

Campaign message focus. One item asked: "To what extent did your campaign communications focus on the following." Participants were asked to rate the degree (None at all/A little/Some/A great deal) to which their campaign messages focused on (a) experience and qualifications, (b) character and ethics, and (c) issue positions. If participants noted that their campaign communications focused "a little," "some," or "a great deal" on issue positions, they were asked a follow-up question based on a measure

used by Arbour and McKenzie (2010): “Which issue positions did you discuss in your campaign communications?” Response options included: (a) Court administration, (b) Crime and sentencing, (c) Civil liberties, (d) Abortion, (e) Tort reform, (f) Consumer protection, (g) Same-sex marriage, (h) Other (with a text entry option).

Attitudes toward negative campaigning. One item, adapted from Francia and Herrnson (2007), was used to assess participants’ attitudes toward negative campaigning tactics. This item asked candidates, “Regardless of the impact on campaign strategy and a candidate’s chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?” Participants could respond as to whether they thought the following subjects concerning their political opponents were “Appropriate” or “Inappropriate”: (a) Using marijuana as a youth, (b) Using cocaine as a youth, (c) Failure to pay taxes (tax evasion, tax fraud), (d) Failure to pay child support, (e) A documented allegation of marital infidelity, (f) A documented allegation of sexual harassment, (g) A bribery conviction, (h) A recent bankruptcy, (i) Using campaign funds for personal use, (j) An opponent’s questionable military record, (k) An opponent’s religious beliefs, (l) A DUI or DWI (drunk driving) conviction, (m) An illegal immigrant employed in an opponent’s home, and (n) An opponent’s sexual orientation.

Consequences of campaigning. A number of survey items were used to assess candidates’ perceived issues with judicial campaigns and elections. Issues taken into consideration include the tone of the electoral contest, campaign financing, non-candidate group involvement, and consequences of campaigning.

Tone of the electoral contest. Two items addressed the tone of the election. One item, adapted by the questionnaire designed by Justice at Stake Campaign (2001), read,

"Was the tone of the electoral contest you were involved in:" and had the following response options: (a) Overwhelmingly positive, (b) Somewhat positive, (c) Neither positive nor negative, (d) Somewhat negative, or (e) Overwhelmingly negative.

Another item dealt with whether the candidate felt that another candidate or non-candidate group misrepresented them. Specifically, participants were asked: "During the campaign, did any group or individual misrepresent your experience, qualifications, character and ethics, or issue positions?" (Yes/No). If the participant responded in the affirmative, he/she was given the follow-up question, "Did you respond to the misrepresentation(s)?" (Yes/No).

Campaign financing. Participants were asked if they established a committee to solicit campaign contributions (Yes/No). To determine the sources of a candidate's campaign funds respondents were asked "What sources contributed campaign funds, (You or your immediate family/Lawyers or law firms/Other individuals (excluding lawyers)/Political party/Interest groups (including PACs)/Other (with a text entry option) and the percentage of time spent on their campaign that was dedicated to fundraising (0%/10%/20%/30%/40%/50%/60%/70%/80%/90%/100%).

Non-candidate group involvement. Four items addressed non-candidate group involvement. Participants were asked, "In the election you were involved in, how active were interest groups (including PACs)?" and "In the election you were involved in, how active were political parties?" Response options for these two items included: (a) Not at all active, (b) Somewhat active, (c) Very active, and (d) Extremely active. Then, participants were asked, "When it comes to interest groups (including PACs) involved in judicial campaigns, are your attitudes toward them:" (Very positive/Somewhat

positive/Neither negative nor positive/Somewhat negative/Very negative). A parallel question was asked for political parties.

Campaign effectiveness. Participants were asked, "All in all, what level of knowledge would you say voters had about your candidacy?" Response options included: (a) Voters were well-informed about my relevant qualifications and/or positions, (b) Voters were somewhat informed about my relevant qualifications and/or positions, (c) Voters were only slightly-informed about my relevant qualifications and/or positions, and (d) Voters were uninformed about my relevant qualifications and/or positions.

Overall experience. Next, participants were asked, "For you, personally, would you say that the experience of running for office was:" (Very positive/Somewhat positive/Neither positive nor negative/Somewhat negative/Very negative).

Plans for the future. Lastly, participants were asked, "Which of the following statements comes closest to your plans for the future?" Response options included: (a) I almost certainly will not run for public office in the future, (b) It is very unlikely that I will run for public office in the future, (c) It is fairly unlikely that I will run for public office in the future, (d) It is fairly likely that I will run for public office in the future, (e) It is very likely that I will run for public office in the future, and (f) I almost certainly will run for public office in the future.

Reform proposal evaluations. Participants were asked whether they strongly supported, somewhat supported, neither supported nor opposed, somewhat opposed, or strongly opposed a number of voluntarist, informational, and structural reform proposals, including: (a) Provide public funding for all ballot-qualified candidates, (b) Limit campaign contributions from attorneys and law firms, (c) Limit campaign expenditures,

(d) Limit expenditures from non-candidate groups (such as political parties, interest groups, and PACs), (e) Require the disclosure of the source of all campaign contributions, (f) Stronger recusal/disqualification rules, (g) State-provided voter guides with information on all ballot-qualified candidates, (h) Voluntary campaign agreements concerning campaign speech and conduct, (i) Include the candidates' incumbency status on ballots, (j) Include the candidates' occupations on ballots, (k) More state regulations concerning campaign speech, (l) Voluntary campaign workshops conducted by an independent, non-partisan committee, (m) Judicial performance evaluations conducted by an independent, non-partisan committee, and (n) Independent campaign oversight committees capable of asking candidates to pull ads or issuing press releases concerning candidates' campaign conduct.

Participants were also asked about what form of judicial selection they favored for both appellate judges and trial judges based on a survey item used by Justice at Stake Campaign (2001). This item read, “How do you think the following types of judges should be selected in your state?” Participants could respond with: (a) Merit selection followed by retention election, (b) Non-partisan popular election, (c) Appointment by the governor with legislative confirmation, (d) Appointment by the governor without legislative confirmation, (e) Partisan popular election, or (f) Legislative appointment or election.

Candidate political profile. Data concerning the candidate’s political profile were also collected, including the office sought, whether the candidate ran in a retention election, campaign budget, incumbency and electoral experience, electoral competition and success, and partisanship.

Office sought. One item asked judicial candidates, "Which of the following best describes the judicial office you campaigned for?" Response options included: (a) Supreme Court, (b) Appellate Court, (c) Trial Court, and (d) Other (with a text entry option).

Retention election. One item asked, "Were you participating in a retention election?" (Yes/No). For the sake of reducing respondent fatigue, candidates who responded in the affirmative were not asked about their incumbency and electoral experience, electoral competition, or partisanship as those items are not relevant to candidates facing retention.

Campaign budget. One item asked, "Was your campaign budget:" (Less than $10,000; $10,001 to $25,000; $25,001 to $50,000; $50,001 to $100,000; $100,001 to $500,000; $500,001 to $1,000,000; More than $1,000,000).

Incumbency and electoral experience. Participants were asked about their incumbency status ("Were you the incumbent for the position you sought?"), whether the incumbent was involved in the contest ("Was the incumbent for the position you sought a candidate in the election?"), and whether they held in elective office in the past ("Have you ever held elective public office"). Participants were able to respond to these questions with "yes" or "no."

Electoral competition and success. Four items dealt with the primary and general elections. First, candidates were asked, "Did you compete in a primary election?" (Yes/No). If they competed in a primary election, they were asked "In your race, how many candidates were there on the primary election ballot (including yourself)?" (1; 2; 3; 4; 5; 6 or more). Participants were then asked, "Did you compete in the general election?"

(Yes, my name was on the ballot/Yes, I competed as a write-in candidate/No). Those who did compete in the general election were asked, “In your race, how many candidates were there on the general election ballot (including yourself)?” (1/2/3/4/5/6 or more).

In order to measure electoral success, participants were asked, “Were you elected to the office you sought?” (Yes/No).

Partisanship. Two items dealt with political party affiliation. First, participants were asked, “Is the office you sought partisan or non-partisan?” (Partisan/Non-partisan). If the response was “Partisan,” the participant received this follow-up question: “Please indicate from which, if any, of the following political parties you sought endorsement for your candidacy and whether you received their endorsement.” Participants were able to note whether they “Sought party endorsement” and/or “Received party endorsement” from the Constitution Party, Democratic Party, Green Party, Libertarian Party, Republican Party, or some other party which they could describe through a text entry.

Candidate demographics. Six items assessed the candidate’s demographics. Gender (Male/Female/I prefer not to answer), age (18-29 years old/30-39 years old/40-49 years old/50-59 years old/60-69 years old/70 years or older/I prefer not to answer), annual household income ($1,000,000 or more/$500,000 to $999,999/$250,000 to $499,999/$100,000 to $249,999/$50,000 to $99,999/$20,000 to $49,999/Less than $20,000/I prefer not to answer), ethnicity (I consider myself Latino, Hispanic, or Spanish/I do not consider myself Latino, Hispanic, or Spanish/I prefer not to answer), race (White or Caucasian/Black or African-American/Asian/Native American or Alaska Native/Native Hawaiian or other Pacific Islander/Other (with text entry option)/I prefer

not to answer), and the state in which the participant ran for office were accounted for in the survey.

General open-ended question. At the conclusion of the survey, participants were given this open-ended question: "If you wish to provide additional comments concerning your campaigning experience or have any comments about this survey, please use the text box below."

Quantitative Data Analysis

Response frequencies and mean scores for the measures described in the previous section are reported in Chapter Five. Cross tabulations are calculated to further explore the data with the inclusion of candidate political profile variables, specifically election type, office sought, incumbency status, and electoral outcome.

As the survey was sent to the great majority of candidates (67% of identified candidates were contacted) and given the non-random selection of survey participants, attempting to use common inferential statistical tests (e.g., t-tests, chi-square tests) to generalize about the larger population of candidates is inappropriate. However, treating the data as though it were derived from a census is equally perplexing given the low response rate. Therefore, the data collected from the survey are limited to those who chose to participate in the study. Future studies should focus their efforts on contacting a smaller, random sample of candidates in order to overcome this limitation.

Qualitative Study

Sample

Participant characteristics. Telephone interviews were conducted with 35 survey participants. Interview participant demographics are summarized in Table 4.9 and

Table 4.9. Interview Participant Demographics: Gender, Age, Income, Ethnicity, and Race.

	n	%
Gender		
Male	25	71.4
Female	10	28.6
Age		
30-39 years old	1	2.9
40-49 years old	9	25.7
50-59 years old	11	31.4
60-69 years old	12	34.3
70 years or older	2	5.7
Income		
$50,000 to $99,999	7	20.0
$100,000 to $249,999	18	51.4
$250,000 to $499,999	6	17.1
Unspecified	4	11.4
Ethnicity		
Latino, Hispanic, Spanish	1	2.9
Not Latino, Hispanic, Spanish	33	94.3
Unspecified	1	2.9
Race		
White or Caucasian	33	94.3
Black or African-American	1	2.9
Unspecified	1	2.9

4.10. Data related to the interview participants' political profile are reported in Tables 4.11 through 4.16.

Sampling procedure. At the end of the survey, participants were asked the following question: "In order to expand upon and better interpret the information we have gained from the survey, a limited number of respondents will be re-contacted over the phone. Would you be willing to talk over the phone with Dr. Hertog or a trained interviewer in order to enhance our understanding of your campaign experience?" Contact information was collected for those who agreed to be interviewed by phone.

Table 4.10. Interview Participant Demographics: State in which Participant Ran for Election.

	n	%		n	%
Alabama	1	2.9	**North Carolina**	1	2.9
California	4	11.4	**Ohio**	2	5.7
Florida	2	5.7	**Oregon**	1	2.9
Georgia	1	2.9	**Texas**	7	20.0
Indiana	1	2.9	**Washington**	2	5.7
Louisiana	1	2.9	**West Virginia**	1	2.9
Michigan	2	5.7	**Wisconsin**	3	8.6
New Mexico	1	2.9	**Unspecified**	5	14.3

Table 4.11. Interview Participant Political Profile: Office Sought.

	n	%
Supreme Court	6	17.1
Appellate Court	11	31.4
Trial Court	18	51.4

Table 4.12. Interview Participant Political Profile: Participated in a Retention Election?

	n	%
Yes	4	11.4
No	31	88.6

Table 4.13. Interview Participant Political Profile: Campaign Budget.

	n	%
Less than $10,000	9	25.7
$10,001 to $25,000	4	11.4
$25,001 to $50,000	7	20.0
$50,001 to $100,000	8	22.9
$100,001 to $500,000	5	14.3
$500,001 to $1,000,000	1	2.9
Unspecified	1	2.9

Table 4.14. Interview Participant Political Profile: Incumbency and Electoral Experience.*

	n	%
Incumbency status		
Incumbent	7	20.0
Non-Incumbent	23	65.7
Unspecified	1	2.9
Incumbent participated in election?**		
Yes	9	37.5
No	14	58.3
Unspecified	1	4.2
Held elective public office?**		
Yes	10	41.7
No	13	54.2
Unspecified	1	4.2

* Interview participants who reported participating in a retention election (n = 4) were excluded from these items.
** Interview participants who reported being the incumbent (n = 7) were excluded from this item.

Candidates who agreed to be re-contacted (n = 156) were considered for inclusion in the qualitative study. Given the small proportion of candidates for higher judicial offices, a greater emphasis was placed on re-contacting supreme and appellate court candidates who agreed to be interviewed by phone (n = 28). In addition, 38 trial court candidates who agreed to be interviewed by phone were re-contacted (see Appendix C for interview materials).

Of the 66 candidates re-contacted, 35 (53%) completed phone interviews between June 13, 2013 and September 13, 2013. Interviews were conducted using Skype, a voice-over-IP service, and recorded using MX Skype Recorder. Recordings were manually transcribed using Express Scribe. Interviews averaged around 35 minutes in length, with the shortest interview being under 18 minutes, and the longest being slightly over 78 minutes.

Table 4.15. Interview Participant Political Profile: Electoral Competition and Success.

	n	%
Competed in the primary election?*		
Yes	18	58.1
No	12	38.7
Unspecified	1	3.2
Number of candidates on the primary election ballot**		
1	4	22.2
2	2	11.1
3	7	38.9
4	2	11.1
5	2	11.1
Unspecified	1	3.2
Competed in the general election?*		
Yes	20	64.5
No	11	35.5
Number of candidates on the general election ballot***		
1	1	5.0
2	15	75.0
4	1	5.0
6 or more	3	15.0
Elected?		
Yes	10	28.6
No	25	71.4

* Interview participants who reported participating in a retention election (*n* = 4) were excluded from this item.
** Only interview participants who reported participating in the primary election (*n* = 18) were included in this item.
*** Only interview participants who reported participating in the general election (*n* = 20) were included in this item.

Interview

Open-ended questions allow participants to present their experiences in their own words. In this way, interviews are adaptable as follow-up and probing questions can be asked based on participants' initial responses. Unlike a static survey that asks a set of predetermined questions as selected by the researcher, interviews allow the researcher to remain open to the "unexpected and the emergent" (Lindlof and Taylor, 2002, p. 172).

Table 4.16. Interview Participant Political Profile: Partisanship.

	n	%
Office sought partisan or non-partisan?*		
Partisan	11	35.5
Non-partisan	20	64.5
Sought party endorsement from:**		
Democratic Party	6	54.5
Republican Party	1	9.1
Received party endorsement from:**		
Democratic Party	5	45.5
Republican Party	1	9.1

* Interview participants who reported participating in a retention election (*n* = 4) were excluded from this item.
** Only interview participants who reported participating in a partisan election (*n* = 11) were included in this item. Participants were able to select multiple response options.

This method is particularly useful in this investigation as literature on the subject is lacking.

Aside from a strong degree of openness in terms of participant responses, interviews also provide an efficient means by which to obtain information. Even a well-designed survey might ask questions of little or no relevance to the participant and omit questions of greater significance. Although interviews can fall victim to similar difficulties, the researcher can adapt interview questions "on the fly" to better capture the participant's experiences.

A third issue, especially pertinent to this study, is that the circumstances of any given judicial contest, and of each candidate within a contest, vary widely. No set of universally appropriate survey measures regarding the topics of study here ever could be produced. That is, no single set of survey questions can possibly cover the wide range of experiences judicial candidates are likely to draw upon when discussing their campaigns. A method that can be more easily adapted to such diversity, in this case depth interviews,

allows for more effective and efficient collection of data not amenable to study via quantitative survey.

Interviews are also preferable to other qualitative methods, such as participant-observation methods, when studying judicial candidates to determine common experiences. Although following candidates on the campaign trail would generate a useful and different set of data related to this subject, the amount of time and resources dedicated to following only a few candidates would produce fine-grained and rich but overly situated findings at a significant cost.

Interview participants were asked a number of questions to help further illustrate their experiences on the campaign trail. Interview questions focused on the candidate's experiences and perceptions related to the media, campaigning, election reforms, and the consequences of campaigning (see Appendix C for interview materials).

Qualitative Data Analysis

Analyzing the data generated through qualitative inquiry is a process that directly involves the researcher and his or her interpretation of the data. Several scholars follow the grounded theory approach outlined by Glaser and Strauss (1967), which is an inductive approach that involves identifying the emergent themes present within the data. This usually involves (albeit implicitly) going through the process of coding and categorizing. Codes, as described by Lindlof and Taylor (2002) are "the linkages between the data and the categories posited by the researcher" (p. 216). On the other hand, categorization is the "process of characterizing the meaning of a unit of data with respect to certain generic properties" (Lindlof & Taylor, 2002, p. 214)

The process of coding and categorizing is unlikely to occur in a neat, linear, stage-

like process. More specific approaches, such as Maykut and Morehouse's (1994) "constant comparison inquiry" detail this process by way of two primary phases: the coarse-grain phase, in which the researcher engages in close readings of text, writing memos, developing broad categories by expanding potential categories and contracting them as the analysis proceeds, and the fine-grain phase, in which categories are refined and further broken down (Butler-Kisber, 2010). The researcher works back and forth between these phases, constantly comparing categories, codes, and the data itself. This method, along with the coding methods described below, will be used in this investigation.

Following Saldaña's (2009) approach to coding qualitative data, data were coded in two phases. First, data were coded using what he refers to as "first cycle" coding methods. Initial coding, or "breaking down qualitative data into discrete parts, closely examining them, and comparing them for similarities and differences," (Saldaña, 2009, p. 81) was conducted initially through simultaneously employing descriptive coding, which "summarizes in a word or short phrase … the basic topic of a passage of qualitative data" (Saldaña, 2009, p. 70).

Following initial coding, second cycle coding methods were used to further synthesize the data by developing a stronger categorical organization. Pattern coding, a second cycle method, was used to further reduce coded data into major themes (or "meta-codes"). Similar codes from initial coding procedures were assembled based on their commonalty in order to develop a final pattern code. Saldaña (2009) notes that this method is appropriate for the development of major themes from the data and for the search of causes and explanations within the data.

Chapter Five presents the results of the study.

Chapter Five

Results and Discussion

This chapter presents the results of the quantitative survey, along with an analysis of the interview data collected. Evidence regarding research questions from Chapter Three is reviewed and tentative answers to the questions are presented. Given the amount of nonresponse, figures presented here should be interpreted with caution as true population data would produce more precise results. However, some of the sources of nonresponse are identifiable. Not all judicial candidates were contacted by the researcher as 1,265 candidates (32% of all candidates) were not contacted to participate in the study (due to lack of available contact information and a lack of adequate funds). It is possible that contact information was accurate. Therefore, observed differences could be the result of nonresponse bias. Because of the differences in response rates among the groups considered for analysis (e.g., partisan candidates, retention candidates, incumbents, etc.), differences of 5% (0.25 for scale items) or greater are considered "potentially significant," warranting further investigation in future studies.

The Importance of the News Media for Judicial Candidates

As discussed in Chapter Three, judicial candidates rarely receive significant news coverage from traditional media outlets (i.e., newspapers). Given the costs associated with campaigning, "free" media (or "earned media") is attractive to candidates for judicial office.

Extent of coverage. Table 5.1 presents the data regarding judicial candidates' perceptions of the extent of coverage their campaigns received from the traditional news

Table 5.1. "Which of the following best characterizes the extent of coverage your campaign received from the traditional news media?"

	None		Minimal		Limited		Moderate		Significant		Unspecified	
	n	**%**	***n***	**%**	***n***	**%**	***n***	**%**	***n***	**%**	***n***	**%**
Election type												
Retention	20	28	27	38	15	21	8	11	1	1	--	--
Partisan	7	7	42	43	33	34	12	12	2	2	1	1
Non-Partisan	11	5	87	43	61	30	33	16	9	4	--	--
Unspecified	15	15	35	34	16	16	11	11	3	3	23	22
Office sought												
Supreme Court	--	--	7	41	7	41	3	18	--	--	--	--
Appellate Court	5	11	28	61	8	17	5	11	--	--	--	--
Trial Court	31	10	119	40	90	30	44	15	11	4	1	0
Other	3	14	8	38	7	33	2	10	1	5		
Unspecified	14	15	29	32	13	14	10	11	3	3	23	25
Incumbent												
Incumbent	13	12	55	52	24	23	11	10	3	3	--	--
Non-Incumbent	5	3	72	38	70	37	34	18	8	4	1	1
Unspecified	35	20	64	36	31	18	19	11	4	2	23	13
Elected												
Won	30	15	88	43	51	25	28	14	5	2	1	0
Lost	9	5	71	40	62	35	27	15	7	4	--	--
Unspecified	14	15	32	34	12	13	9	10	3	3	23	25
Total	53	11	191	40	125	26	64	14	15	3	24	5

coverage. Overall, few candidates report receiving significant coverage (*n* = 15, 3%). The majority of respondents indicated receiving no coverage (*n* = 53, 11%) or minimal coverage (*n* = 191, 40%). This pattern generally holds across election types, the judicial office sought, incumbency status, and electoral outcome.

Further examination of the level of office sought reveals stark differences in the perceived extent of news coverage. Candidates for appellate court report far less news coverage than candidates for other office levels, with over 70% of appellate court candidates reporting no coverage or minimal coverage. As one might expect, candidates for supreme court report receiving greater news coverage, though the majority report receiving minimal (*n* = 7, 41%) or limited coverage (*n* = 7, 41%). Candidates in partisan and non-partisan elections report receiving similar amounts of news coverage, though a substantial amount of judges standing for retention (*n* = 20, 28%) claim they received no coverage at all. Few candidates in partisan (*n* = 7, 7%) or non-partisan elections (*n* = 11, 5%) share the same perception. Incumbents have a bleaker view of the media's coverage of their campaign compared to their non-incumbent counterparts. Whereas most incumbents' responses to this survey item fell between "None" and "Limited," most non-incumbents' responses fell between "Minimal" and "Moderate." Surprisingly, those who lost the election reported receiving greater coverage than those who won.

Table 5.2 summarizes the results regarding the number of candidates who reported receiving significant attention from non-traditional media sources. Overall, several candidates report receiving attention from social media (*n* = 182, 39%), and a few received coverage from talk radio (*n* = 71, 15%) or political blogs (*n* = 75, 16%). Slightly

Table 5.2. "Please indicate which, if any, of the following non-traditional media sources provided significant attention to your campaign."

	Talk radio		Political blogs		Social media		Other		None	
	n	%	*n*	%	*n*	%	*n*	%	*n*	%
Election type										
Retention	11	15	6	8	18	25	5	7	41	58
Partisan	14	14	18	19	46	47	9	9	39	40
Non-Partisan	40	20	44	22	96	48	22	11	77	38
Unspecified	6	6	7	7	22	21	5	5	36	35
Office sought										
Supreme Court	4	24	7	41	10	59	2	12	4	24
Appellate Court	4	9	8	17	9	20	3	7	27	59
Trial Court	53	18	52	18	132	45	27	9	126	43
Other	5	24	3	14	12	57	5	24	7	33
Unspecified	5	5	5	5	19	21	4	4	29	32
Incumbent										
Incumbent	12	11	19	18	33	31	6	6	60	57
Non-Incumbent	42	22	44	23	107	56	25	13	55	29
Unspecified	17	10	12	7	42	24	10	6	78	44
Elected										
Won	33	16	30	15	73	36	18	9	102	50
Lost	32	18	40	23	91	52	19	11	59	34
Unspecified	6	6	5	5	18	19	4	4	32	34
Total	71	15	75	16	182	39	41	9	193	41

less than half the candidates do not receive any coverage from these sources (*n* = 193, 41%).

Substantial differences existed across all levels of the variables of interest. Judges standing for retention overwhelmingly report receiving no attention from any non-traditional media sources (*n* = 41, 58%). Although nearly half of all partisan and non-partisan candidates reported receiving coverage from social media (*n* = 46, 47%; *n* = 96, 48% respectively), far fewer candidates for retention received such coverage (*n* = 18, 25%). As one might expect, a greater number of candidates for supreme court received attention from these non-traditional media sources than candidates for other levels of the judiciary. Similarly, greater numbers of trial court candidates reported receiving attention from these sources than appellate court candidates. In fact, a majority of appellate court candidates (*n* = 27, 59%) report receiving no attention from these sources. Nearly twice as many incumbents than non-incumbents report receiving no coverage at all from these sources (*n* = 60, 57% compared to *n* = 55, 29% respectively). Election winners more frequently report receiving no coverage from non-traditional sources (*n* = 102, 50%) compared to defeated candidates (*n* = 59, 34%).

As Table 5.3 shows, across all election types, level of office, incumbency status, and electoral outcome, the majority of judicial candidates have accepted that the news media are unlikely to provide significant coverage of their campaign or contest. Most notably, appellate court candidates overwhelmingly do not expect to receive coverage (*n* = 44, 96%), though supreme court candidates are split, with a little less than half (47%) who expected significant news coverage. Non-incumbents appear more hopeful than incumbents at securing coverage, with over 25% of non-incumbents reporting that they

Table 5.3. "Did you expect your contest to receive significant news coverage?"

	Yes		No		Unspecified	
	n	**%**	***n***	**%**	***n***	**%**
Election type						
Retention	8	11	61	86	2	3
Partisan	17	18	77	79	3	3
Non-Partisan	46	23	152	76	3	1
Unspecified	10	10	56	54	37	36
Office sought						
Supreme Court	8	47	9	53	--	--
Appellate Court	1	2	44	96	1	2
Trial Court	58	20	231	78	7	2
Other	6	29	15	71	--	--
Unspecified	8	9	47	51	37	40
Incumbent						
Incumbent	13	12	88	83	5	5
Non-Incumbent	49	26	139	73	2	1
Unspecified	19	11	119	68	38	22
Elected						
Won	21	10	175	86	7	3
Lost	51	29	123	70	2	1
Unspecified	9	10	48	52	36	39
Total	81	17	346	73	45	10

expected significant coverage compared to less than half that amount of incumbents (12%).

Boring campaigns, disinterested public. Interview data revealed candidates had developed a number of explanations as to why judicial campaigns and elections receive little to no coverage from the media. Candidates differed as to what precisely makes judicial races unattractive to media outlets. One of the more prominent themes that emerged from the interviews was that judicial races are boring, uninteresting and dull.

A second view expressed as to why coverage is scant was that the public has little interest in the courts. James Egan, an Oregon appellate court candidate, explained, "The media industry - I mean they have to cover stories that people want to see. If you cover

things that people don't want to see, people aren't going to watch so much." A similar view was shared by Louisiana appellate court candidate, J. Christopher Erny. "It was a judicial election," he explained, "most people don't really care about judicial elections. They don't know what a judge does." The media, according to California trial court candidate, John Henry, may not be able to adequately report the judiciary's doings in an easy-to-understand, marketable fashion.

> "It's really kind of difficult to encapsulate things like 'judicial philosophy' in a sound bite that may be catchy. I mean you can come up with catchphrases but ... nobody's going to say that they want to be soft on crime. Nobody wants to say that they're going to be unfair … It requires a kind of a second level of discussion to really get to what someone means when they say 'tough on crime' or what someone means when they say that people will 'be treated fairly.'"

The public lacks an interest in judicial elections, according to Chris Lipscomb, a trial court candidate in Wisconsin, "because you almost have to run a boring race."

Candidates cite campaign speech regulations as the root cause of boring campaigns. As Stephen Burk, a Florida trial court candidate, reasoned: "[The news media] didn't really cover any of our campaign stops because they were all very uneventful because you can't say anything." Allen Miller, a Washington trial court candidate, offered a similar view: "Judicial races are not as sexy because of the fact that … you're not spouting off on issues. You're basically just talking about your biography."

Others reasoned the lack of coverage was due to the presence of higher profile races, making judicial races less interesting by comparison. Paul Kennedy, a candidate for New Mexico's Supreme Court, recalled,

> "There was a Presidential race. There was a US Senatorial race. There were Congressional races. So all those races had a lot more money in them and with a lot more TV advertising and so of course they're the high profile races and so that really detracts from anything below that level."

Only the extraordinary get coverage. For the few that received extensive coverage from the news media, the reason why they receive such coverage is clear: they are extraordinary candidates or are running in races whose distinctive qualities can be easily grasped by the public. "I was and am the first female chief justice of this court," declared Ann Crawford McClure, a Texas appellate court candidate. "The court was established in 1911. We celebrated our centennial event two years ago and the media was loving, totally loving the, the fact that we had a first female chief justice in the history of the court and that obviously played to the gender vote. I made history and the El Paso Times did this amazing story on me. Front page: lady justice, first female. It was a huge article that garnered tremendous attention in the community." Likewise, the race itself may be so uncommon that it receives a wealth of media coverage. One California trial court explained, "Contested judicial campaigns are rare and so [my race] got a lot of attention just because it was kind of a once in a generation event. I don't think we had contested judicial elections in our area in probably 25 years and we had two at the same [time]."

Media coverage as undesirable. For some, the lack of media coverage is a godsend. "Who wants to subject themselves and their family to the types of scrutiny that others are often subjected to?" asked Mark Shriver, a Georgia trial court candidate. "I

think that's one reason why I ran in a judicial race as opposed to some other political position because I didn't expect it and it didn't happen."

Aside from unwanted intrusions into the candidate's personal life, candidates have no problem with being snubbed by undesirable media outlets. "[The local] paper is big, but, on the other hand it's loathed and hated by the conservative portion of the population," explained one trial court candidate. "The Tea Partiers just think it's a communist rag ... I mean some people will … find out who the [paper] endorsed and vote for the opponent." Being "guilty by association" was a fear also held by Tod Daniel, a Wisconsin trial court candidate. "I can't even remember who [the paper] endorsed anymore because you generally don't want their endorsement," Daniel recounted. "They're right-wing lunatics … [and] we're a union county."

Type of coverage. Aside from the sheer amount of coverage, survey respondents also addressed the type of coverage they received. Specifically, candidates assessed whether coverage was a) adequate, b) focused on important issues, c) sensationalist in nature, d) biased in favor of the opposition or in favor of themselves, and e) accurate.

Adequacy of coverage. Tables 5.4.1 and 5.4.2 show the results concerning candidates' perceptions of the adequacy of news coverage. Overall, data show candidates leaned toward agreement with the claim that the news coverage they received was inadequate ($M = 3.21$, $SD = 1.22$). Little variation was found among election types and level of office sought, though there are stark differences based on incumbency status and electoral outcome. Incumbents were slightly less prone to agree that coverage was inadequate ($M = 2.84$, $SD = 1.26$) compared to non-incumbents ($M = 3.31$, $SD = 1.2$). Perhaps unsurprising, election winners also tended to disagree ($M = 2.76$, $SD = 1.16$) and

Table 5.4.1. "News coverage of my electoral contest was inadequate" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	3	13	6	25	6	25	6	25	3	13	--	--
Partisan	5	11	9	19	11	23	17	36	5	11	--	--
Non-Partisan	10	10	25	24	15	15	37	36	15	15	1	1
Unspecified	--	--	4	13	7	23	4	13	5	17	10	33
Office sought												
Supreme Court	1	10	1	10	2	20	4	40	2	20	--	--
Appellate Court	1	8	3	23	1	8	4	31	4	31	--	--
Trial Court	12	8	35	24	30	21	47	32	19	13	2	1
Other	3	30	2	20	--	--	5	50	--	--	--	--
Unspecified	1	4	3	12	6	23	4	15	3	12	9	35
Incumbent												
Incumbent	5	13	12	32	9	24	6	16	5	13	1	3
Non-Incumbent	10	9	22	20	18	16	46	41	15	13	1	1
Unspecified	3	6	10	19	12	22	12	22	8	15	9	17
Elected												
Won	12	14	27	32	19	23	21	25	5	6	--	--
Lost	6	6	15	16	14	15	40	42	19	20	2	2
Unspecified	--	--	2	8	6	25	3	13	4	17	9	38
Total	18	9	44	22	39	19	64	31	28	14	11	5

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.4.2. "News coverage of my electoral contest was inadequate" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	3.00	1.25
Partisan	47	3.17	1.19
Non-Partisan	102	3.22	1.25
Unspecified	20	3.50	1.10
Office sought			
Supreme Court	10	3.50	1.27
Appellate Court	13	3.54	1.39
Trial Court	143	3.18	1.19
Other	10	2.70	1.42
Unspecified	17	3.29	1.16
Incumbent			
Incumbent	37	2.84	1.26
Non-Incumbent	111	3.31	1.20
Unspecified	45	3.27	1.19
Elected			
Won	84	2.76	1.16
Lost	94	3.54	1.17
Unspecified	15	3.60	1.06
Total	193	3.21	1.22

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

defeated candidates were more willing to support the claim (M = 3.54, SD = 1.17).

Focus on important issues. Tables 5.5.1 and 5.5.2 summarize the data related to candidates' views as to whether the media focused on important issues. Overall, candidates tilted toward disagreement on this survey item (M = 2.61, SD = 1.19). Differences across office levels were surprising. Whereas appellate court candidates

Table 5.5.1. "News coverage of my electoral contest focused on the important issues" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	5	21	6	25	5	21	6	25	2	8	--	--
Partisan	7	15	15	32	10	21	11	23	3	6	1	2
Non-Partisan	21	20	34	33	17	17	27	26	3	3	1	1
Unspecified	7	23	5	17	5	17	3	10	1	3	9	30
Office sought												
Supreme Court	3	30	3	30	1	10	3	30	--	--	--	--
Appellate Court	2	15	3	23	2	15	4	31	2	15	--	--
Trial Court	28	19	48	33	26	18	34	23	6	4	3	2
Other	1	10	2	20	3	30	3	30	1	10		
Unspecified	6	23	4	15	5	19	3	12	--	--	8	31
Incumbent												
Incumbent	3	8	11	29	12	32	8	21	3	8	1	3
Non-Incumbent	24	21	38	34	16	14	28	25	4	4	2	2
Unspecified	13	24	11	20	9	17	11	20	2	4	8	15
Elected												
Won	11	13	23	27	17	20	25	30	8	10	--	--
Lost	23	24	32	33	17	18	20	21	1	1	3	3
Unspecified	6	25	5	21	3	13	2	8	--	--	8	33
Total	40	20	60	29	37	18	47	23	9	4	11	5

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.5.2. "News coverage of my electoral contest focused on the important issues" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.75	1.29
Partisan	46	2.74	1.18
Non-Partisan	102	2.58	1.17
Unspecified	21	2.33	1.24
Office sought			
Supreme Court	10	2.40	1.26
Appellate Court	13	3.08	1.38
Trial Court	142	2.59	1.17
Other	10	3.10	1.20
Unspecified	18	2.28	1.13
Incumbent			
Incumbent	37	2.92	1.09
Non-Incumbent	110	2.55	1.19
Unspecified	46	2.52	1.26
Elected			
Won	84	2.95	1.22
Lost	93	2.40	1.11
Unspecified	16	2.06	1.06
Total	193	2.61	1.19

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

appear to be the ones left out of the news cycle, they were mostly neutral on this item (*M* = 3.08, *SD* = 1.38) compared to supreme court candidates (*M* = 2.40, *SD* = 1.26) or trial court candidates (*M* = 2.59, *SD* = 1.17). Incumbents (M = 2.92, *SD* = 1.09) and election winners (*M* = 2.95, *SD* = 1.22) also view the media more favorably on this measure than

non-incumbents (*M* = 2.55, *SD* = 1.19) and those defeated in the election (*M* = 2.4, *SD* = 1.11).

Sensationalism. Results concerning whether participants felt the media focused on their electoral contests' most sensational features are presented in Tables 5.6.1 and 5.6.2. Overall, candidates fell somewhere between neutral and somewhat disagreement with the notion that the media were sensationalist in their coverage (*M* = 2.87, *SD* = 1.24). Supreme court candidates felt that the media were sensationalist (*M* = 3.2, *SD* = 1.32), while appellate court candidates disagreed (*M* = 2.31, *SD* = 1.11).

Candidates for appellate and trial courts felt the media were somewhat passive bystanders in their contests. Timothy Vocke, a candidate for trial court, noted the shift in the media's role between his first campaign and his most recent:

> "The media 30 years ago - I think fanned the flames and I think that was part of the problem. We have weekly newspapers up here and I used to hate to open the newspaper on Thursday morning because I knew that there would just be awful things in it … [this time,] they were observers rather than participants and their treatment of all three candidates was very even-handed."

The lack of an active press acting as watchdog was frustrating to some candidates, such as James Rowe, a West Virginia Supreme Court candidate. "I don't think [the media] got into the records as much as they could have and should have," Rowe said. "They just weren't that involved. We don't really have a lot of reporting going on in our state these days it seems in so far as the newspapers are concerned."

Others found the media was more interested in candidates embroiled in scandal. David Towler, a candidate for a Texas appellate court, noted, "[the media] seemed to

Table 5.6.1. "News coverage of my electoral contest focused on its most sensational features" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	5	21	5	21	7	29	5	21	2	8	--	--
Partisan	12	26	8	17	15	32	11	23	1	2	--	--
Non-Partisan	11	11	22	21	29	28	26	25	11	11	4	4
Unspecified	6	20	4	13	3	10	2	7	5	17	10	33
Office sought												
Supreme Court	1	10	3	30	--	--	5	50	1	10	--	--
Appellate Court	4	31	3	23	4	31	2	15	--	--	--	--
Trial Court	20	14	27	19	47	32	35	24	11	8	5	3
Other	3	30	2	20	1	10	1	10	2	20	1	10
Unspecified	6	23	4	15	2	8	1	4	5	19	8	31
Incumbent												
Incumbent	8	21	4	11	12	32	13	34	--	--	1	3
Non-Incumbent	16	14	25	22	32	29	23	21	12	11	4	4
Unspecified	10	19	10	19	10	19	8	15	7	13	9	17
Elected												
Won	21	25	7	8	22	26	27	32	5	6	2	2
Lost	9	9	28	29	30	31	16	17	9	9	4	4
Unspecified	4	17	4	17	2	8	1	4	5	21	8	33
Total	34	17	39	19	54	26	44	22	19	9	14	7

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.6.2. "News coverage of my electoral contest focused on its most sensational features" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.75	1.26
Partisan	47	2.60	1.17
Non-Partisan	99	3.04	1.18
Unspecified	20	2.80	1.61
Office sought			
Supreme Court	10	3.20	1.32
Appellate Court	13	2.31	1.11
Trial Court	140	2.93	1.15
Other	9	2.67	1.66
Unspecified	18	2.72	1.67
Incumbent			
Incumbent	37	2.81	1.15
Non-Incumbent	108	2.91	1.22
Unspecified	45	2.82	1.39
Elected			
Won	82	2.85	1.30
Lost	92	2.87	1.12
Unspecified	16	2.94	1.65
Total	190	2.87	1.24

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

spend more time on an individual candidate that had some dirt than they did on the candidates where the race wasn't as newsworthy."

Bias. Candidates' responses to whether they believed media coverage was biased in favor of their opposition are summarized in Tables 5.7.1 and 5.7.2. Overall, candidates' responses fell once again between disagreement and neutral

Table 5.7.1. "News coverage of my electoral contest was biased in favor of my opposition" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	6	25	4	17	5	21	7	29	2	8	--	--
Partisan	15	32	7	15	16	34	6	13	2	4	1	2
Non-Partisan	22	21	19	18	30	29	23	22	8	8	1	1
Unspecified	4	13	5	17	4	13	4	13	5	17	8	27
Office sought												
Supreme Court	1	10	3	30	3	30	2	20	--	--	1	10
Appellate Court	4	31	4	31	1	8	4	31	--	--	--	--
Trial Court	32	22	25	17	44	30	30	21	13	9	1	1
Other	6	60	--	--	2	20	2	20	--	--	--	--
Unspecified	4	15	3	12	5	19	2	8	4	15	8	31
Incumbent												
Incumbent	13	34	8	21	15	39	2	5	--	--	--	--
Non-Incumbent	24	21	20	18	30	27	26	23	10	9	2	2
Unspecified	10	19	7	13	10	19	12	22	7	13	8	15
Elected												
Won	34	40	13	15	24	29	12	14	1	1	--	--
Lost	11	11	19	20	27	28	26	27	11	11	2	2
Unspecified	2	8	3	13	4	17	2	8	5	21	8	33
Total	47	23	35	17	55	27	40	20	17	8	10	5

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.7.2. "News coverage of my electoral contest was biased in favor of my opposition" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.79	1.35
Partisan	46	2.41	1.20
Non-Partisan	102	2.76	1.24
Unspecified	22	3.05	1.46
Office sought			
Supreme Court	9	2.67	1.00
Appellate Court	13	2.38	1.26
Trial Court	144	2.77	1.26
Other	10	2.00	1.33
Unspecified	18	2.94	1.47
Incumbent			
Incumbent	38	2.16	0.97
Non-Incumbent	110	2.80	1.28
Unspecified	46	2.98	1.39
Elected			
Won	84	2.20	1.16
Lost	94	3.07	1.19
Unspecified	16	3.31	1.45
Total	194	2.72	1.28

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

(*M* = 2.72, *SD* = 1.28). Somewhat surprisingly, non-partisan candidates were in more agreement with the notion that the media favored their opponents (*M* = 2.76, *SD* = 2.41) than partisan candidates (*M* = 2.41, *SD* = 1.2). Appellate court candidates were less likely to agree that the press exhibited a bias favoring their opponents (*M* = 2.38, *SD* = 1.26) compared to supreme court (*M* = 2.67, *SD* = 1.00) and trial court candidates

(*M* = 2.77, *SD* = 1.26). Non-incumbents (*M* = 2.80, *SD* = 1.28) and defeated candidates (*M* = 3.07, *SD* = 1.19) were also more likely to suggest the media favored their opponents compared to incumbents (*M* = 2.16, *SD* = 0.97) and election winners (*M* = 2.20, *SD* = 1.16).

Tables 5.8.1 and 5.8.2 summarize candidates' responses to whether they believed the news coverage of their electoral contests was biased in their own favor. As the table shows, few candidates felt that the media favored them in the election. Only two candidates (less than one percent who received this survey question) felt strongly that the media favored them in the election. Overall, candidates somewhat disagreed that this form of bias was present (*M* = 2.08, *SD* = 1.07). Differences were minor among candidates based on election type, incumbency status, and electoral result. Appellate court candidates were in strong disagreement with such a claim (*M* = 1.77, *SD* = 0.83) with more than one third of such candidates (*n* = 5, 38%) voicing strong disagreement and more than half (*n* = 7, 53%) reporting some level of disagreement.

Although candidates did not report an overwhelming perception of media bias (either in favor of their opposition or themselves), interview participants discussed media bias stemming from partisanship, close associations between the opposition and the media, and media incompetency. Candidates running in partisan elections, such as Lawrence Praeger, a Texas appellate court candidate, considered the partisanship of media outlets. "The newspaper is very Republican and I ran as a Democrat," Praeger observed. "Now occasionally they'll endorse a Democrat if there's a scandal or something of that nature, but only in the rare cases do you see the endorsements go against what is traditionally seen as very conservative Republican newspaper."

Table 5.8.1. "News coverage of my electoral contest was biased in my favor" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	9	38	7	29	3	13	4	17	1	4	--	--
Partisan	20	43	10	21	10	21	7	15	--	--	--	--
Non-Partisan	35	34	29	28	30	29	7	7	1	1	1	1
Unspecified	13	43	3	10	4	13	2	7	--	--	8	27
Office sought												
Supreme Court	2	20	3	30	3	30	2	20	--	--	--	--
Appellate Court	5	38	7	54	--	--	1	8	--	--	--	--
Trial Court	52	36	36	25	38	26	16	11	2	1	1	1
Other	7	70	1	10	1	10	1	10	--	--	--	--
Unspecified	11	42	2	8	5	19	--	--	--	--	8	31
Incumbent												
Incumbent	12	32	6	16	13	34	7	18	--	--	--	--
Non-Incumbent	42	38	33	29	26	23	9	8	1	1	1	1
Unspecified	23	43	10	19	8	15	4	7	1	2	8	15
Elected												
Won	35	42	13	15	21	25	14	17	1	1	--	--
Lost	32	33	34	35	22	23	6	6	1	1	1	1
Unspecified	10	42	2	8	4	17	--	--	--	--	8	33
Total	77	38	49	24	47	23	20	10	2	1	9	4

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.8.2. "News coverage of my electoral contest was biased in my favor" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.21	1.25
Partisan	47	2.09	1.12
Non-Partisan	102	2.12	1.00
Unspecified	22	1.77	1.07
Office sought			
Supreme Court	10	2.50	1.08
Appellate Court	13	1.77	0.83
Trial Court	144	2.17	1.08
Other	10	1.60	1.07
Unspecified	18	1.67	0.91
Incumbent			
Incumbent	38	2.39	1.13
Non-Incumbent	111	2.05	1.01
Unspecified	46	1.91	1.11
Elected			
Won	84	2.20	1.19
Lost	95	2.05	0.96
Unspecified	16	1.63	0.89
Total	195	2.08	1.07

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

For others, the source of bias came from the connections between the media outlet and the opposition. “[This publisher] tried to undermine me in all his questioning by asking me very leading questions that were not objective, that were designed to try to undermine me and try to say that my opponent was a lot better qualified than I was,” said one California trial court candidate. “He was just out there to put me on a hit list and do

whatever he can to discredit me in his paper because he was buddies with the father who was a judge and friendly with his son and that became very apparent in his hatchet job and what he had written about me in his publication."

Candidates may have felt that the media were more incompetent than biased, as was the case with Courtney McAllister, a California trial court candidate. "Two days prior to the election, the paper ran a series of letters to the editor that either promoted my opponent or lambasted me and we had several letters that friends had submitted to the paper that did not get published in those last two days. It was bizarre. I couldn't believe it," said McAllister, "I open the paper and there's like four letters that are for him or against me and none of our letters were published ... So we reached out to the paper. At the same time - the paper's editor was fired and so it was hard to even figure out who was in charge and nothing could be done. We'd get e-mail or phone call replies saying 'Sorry, we can't find your letters and this is what we ran with.' It was disappointing … It was frustrating."

A Texas appellate court candidate reported a similar situation: "[The newspaper] scheduled me for an interview at a time when I had a conflict - a meeting that I myself was hosting and could not move and I called them repeatedly in an interval between receiving the notice and the meeting time and I finally got to speak to someone - the person - after the time for it - the next day - and he had already published a recommendation for my opponent, which was pretty sucky."

Accuracy. As Tables 5.9.1 and 5.9.2 show, candidates felt that the media was accurate (M = 3.38, SD = 1.18). Minor differences were found across office level and incumbency status, though all leaned toward agreement with the claim that the media were accurate. Notably, appellate court candidates were more in agreement

Table 5.9.1. "News coverage of my electoral contest was accurate"

(Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	--	--	6	25	3	13	10	42	5	21	--	--
Partisan	1	2	11	23	8	17	15	32	11	23	1	2
Non-Partisan	8	8	20	19	18	17	44	43	12	12	1	1
Unspecified	5	17	1	3	5	17	6	20	4	13	9	30
Office sought												
Supreme Court	1	10	4	40	--	--	4	40	1	10	--	--
Appellate Court	--	--	2	15	2	15	6	46	3	23	--	--
Trial Court	8	6	32	22	23	16	57	39	22	15	3	2
Other	1	10	--	--	3	30	2	20	4	40	--	--
Unspecified	4	15	--	--	6	23	6	23	2	8	8	31
Incumbent												
Incumbent	2	5	9	24	3	8	13	34	11	29	--	--
Non-Incumbent	7	6	22	20	22	20	46	41	13	12	2	2
Unspecified	5	9	7	13	9	17	16	30	8	15	9	17
Elected												
Won	4	5	14	17	9	11	32	38	25	30	--	--
Lost	6	6	24	25	20	21	38	40	5	5	3	3
Unspecified	4	17	--	--	5	21	5	21	2	8	8	33
Total	14	7	38	19	34	17	75	37	32	16	11	5

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.9.2. "News coverage of my electoral contest was accurate" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	3.58	1.10
Partisan	46	3.52	1.17
Non-Partisan	102	3.31	1.15
Unspecified	21	3.14	1.46
Office sought			
Supreme Court	10	3.00	1.33
Appellate Court	13	3.77	1.01
Trial Court	142	3.37	1.16
Other	10	3.80	1.32
Unspecified	18	3.11	1.32
Incumbent			
Incumbent	38	3.58	1.29
Non-Incumbent	110	3.33	1.12
Unspecified	45	3.33	1.26
Elected			
Won	84	3.71	1.20
Lost	93	3.13	1.07
Unspecified	16	3.06	1.39
Total	193	3.38	1.18

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

(*M* = 3.77, *SD* = 1.01) than supreme court candidates (*M* = 3.00, *SD* = 1.33) or trial court candidates (*M* = 3.37, *SD* = 1.16). Election winners (*M* = 3.71, *SD* = 1.20) were also more in agreement than defeated candidates (*M* = 3.13, *SD* = 1.07), though again both groups fell somewhere between neutral and agreement on this measure.

Candidate campaign strategy. Results pertaining to whether candidates felt the media focused too much on candidate campaign strategies are reported in Tables 5.10.1

and 5.10.2. Candidates were united in their disagreement with the idea that the media was fixated with campaign strategy (*M* = 2.20, *SD* = 1.03). Interestingly, those in partisan races voiced stronger disagreement (*M* = 1.96, *SD* = 1.04) than those standing for retention (*M* = 2.21, *SD* = 0.93) or running in non-partisan races (*M* = 2.29, *SD* = 1.01). Supreme court candidates rated highest on this measure, falling nearly in the middle (*M* = 2.90, *SD* = 1.29). This comes as no surprise as supreme court candidates wage higher-scale campaigns and engage in far more campaign activity than candidates for other judicial offices. There was also a substantial divide between election winners (*M* = 1.98, *SD* = 1.02) and defeated candidates (*M* = 2.4, *SD* = 0.97), though both disagreed somewhat that the media focused on campaign strategy.

Horse race coverage. Results pertaining to whether the media focused too much on who was leading or who was behind (i.e., "horse race coverage") were similar to results regarding media focus on candidate campaign strategy. As Tables 5.11.1 and 5.11.2 show, candidates across all levels of variables included for analysis disagreed with the notion that the media focused too heavily on horse race coverage. Supreme court candidates, who scored the highest on this item (*M* = 2.50, *SD* = 1.35), were still slanted toward disagreement. Horse race coverage is less likely in judicial races due to the lack of regular polling, a feature of most high-level legislative and executive offices.

System/candidate effort. Determining who is involved in making campaign communication acts "happen" reveals the major players of the campaign and can influence the importance candidates place on particular acts. Results pertaining to the

Table 5.10.1. "News coverage of my electoral contest focused too much on candidate campaign strategies" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	7	29	6	25	10	42	1	4	--	--	--	--
Partisan	22	47	8	17	15	32	1	2	1	2	--	--
Non-Partisan	28	27	26	25	36	35	9	9	1	1	3	3
Unspecified	8	27	2	7	10	33	1	3	1	3	8	27
Office sought												
Supreme Court	2	20	1	10	4	40	2	20	1	10	--	--
Appellate Court	6	46	3	23	3	23	--	--	1	8	--	--
Trial Court	42	29	36	25	54	37	10	7	--	--	3	2
Other	7	70	--	--	3	30	--	--	--	--	--	--
Unspecified	8	31	2	8	7	27	--	--	1	4	8	31
Incumbent												
Incumbent	15	39	7	18	14	37	2	5	--	--	--	--
Non-Incumbent	33	29	27	24	38	34	9	8	2	2	3	3
Unspecified	17	31	8	15	19	35	1	2	1	2	8	15
Elected												
Won	39	46	12	14	27	32	5	6	--	--	1	1
Lost	19	20	29	30	37	39	7	7	2	2	2	2
Unspecified	7	29	1	4	7	29	--	--	1	4	8	33
Total	65	32	42	21	71	35	12	6	3	1	11	5

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.10.2. "News coverage of my electoral contest focused too much on candidate campaign strategies" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.21	0.93
Partisan	47	1.96	1.04
Non-Partisan	100	2.29	1.01
Unspecified	22	2.32	1.17
Office sought			
Supreme Court	10	2.90	1.29
Appellate Court	13	2.00	1.22
Trial Court	142	2.23	0.96
Other	10	1.60	0.97
Unspecified	18	2.11	1.18
Incumbent			
Incumbent	38	2.08	1.00
Non-Incumbent	109	2.27	1.04
Unspecified	46	2.15	1.03
Elected			
Won	83	1.98	1.02
Lost	94	2.40	0.97
Unspecified	16	2.19	1.22
Total	193	2.20	1.03

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

communication activities candidates engaged in and who initiated such events are summarized in Table 5.12. Given the complexity of these survey items, results were not broken down across the variables of interest, though future studies could further the exploration of system/candidate effort.

Table 5.11.1. "News coverage of my electoral contest focused too much on who was leading or behind" (Percentages).*

	Strongly Disagree		Somewhat Disagree		Neither Agree Nor Disagree		Somewhat Agree		Strongly Agree		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	10	42	3	13	11	46	--	--	--	--	--	--
Partisan	26	55	8	17	10	21	2	4	1	2	--	--
Non-Partisan	39	38	24	23	29	28	7	7	3	3	1	1
Unspecified	7	23	3	10	12	40	--	--	--		8	27
Office sought												
Supreme Court	3	30	2	20	3	30	1	10	1	10	--	--
Appellate Court	9	69	2	15	1	8	--	--	1	8	--	--
Trial Court	57	39	29	20	48	33	8	6	2	1	1	1
Other	6	60	2	20	2	20	--	--	--	--	--	--
Unspecified	7	27	3	12	8	31	--	--	--	--	8	31
Incumbent												
Incumbent	18	47	9	24	11	29	--	--	--	--	--	--
Non-Incumbent	45	40	24	21	29	26	9	8	4	4	1	1
Unspecified	19	35	5	9	22	41	--	--	--	--	8	15
Elected												
Won	48	57	13	15	21	25	2	2	--	--	--	--
Lost	28	29	23	24	33	34	7	7	4	4	1	1
Unspecified	6	25	2	8	8	33	--	--	--	--	8	33
Total	82	40	38	19	62	30	9	4	4	2	9	4

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.

Table 5.11.2. "News coverage of my electoral contest focused too much on who was leading or behind" (Scale).*

	Scale**		
	n	**M**	**SD**
Election type			
Retention	24	2.04	0.95
Partisan	47	1.81	1.06
Non-Partisan	102	2.13	1.1
Unspecified	22	2.23	0.92
Office sought			
Supreme Court	10	2.50	1.35
Appellate Court	13	1.62	1.19
Trial Court	144	2.09	1.04
Other	10	1.60	0.84
Unspecified	18	2.06	0.94
Incumbent			
Incumbent	38	1.82	0.87
Non-Incumbent	111	2.13	1.15
Unspecified	46	2.07	0.95
Elected			
Won	84	1.73	0.92
Lost	95	2.33	1.11
Unspecified	16	2.13	0.96
Total	195	2.05	1.05

* Only respondents who reported 'Limited,' 'Moderate,' or 'Significant' news coverage (n = 204) were considered for analysis.
** Results exclude cases that had missing values for survey item.

The media do engage in actions that have the potential for generating news coverage. Of the candidates who were interviewed (*n* = 212), nearly three-quarters (n = 152, 72%) reported a media news organization initiated the event. Likewise, more than 75% of those who spoke to an editorial board (*n* = 143) did so at the behest of a media news organization. Radio and talk show participation, however, was divided

Table 5.12. "For each of the following activities your campaign engaged in, please indicate all actors who initiated at least one communication event."

	Media News organization		A community, business, or activist group		A political party		You or your campaign organization		An opponent		Some other individual or group		Total*
	n	%	n	%	n	%	n	%	n	%	n	%	n
Television talk show	26	60	6	14	2	5	14	33	--	--	3	7	43
Radio talk show	56	48	7	6	3	3	58	50	4	3	8	7	117
Public speeches	24	10	138	55	101	41	113	45	7	3	54	22	249
Broadcast debates	24	31	41	53	5	6	4	5	2	3	7	9	78
Public debates that were not broadcast	9	6	97	69	37	26	16	11	--	--	29	21	140
Provide an interview to a journalist	152	72	6	3	5	2	70	33	5	2	4	2	212
Speak to an editorial board	108	76	5	4	--	--	32	22	3	2	5	4	143
Address a community group	12	4	184	63	54	19	163	56	8	3	42	14	290
Fill out an issues questionnaire	77	36	119	56	29	14	49	23	--	--	39	18	214

* Total refers to the total number of participants who reported engaging in the activity.

Note: Percentages take into account the number of participants who indicated the actor initiated the event out of the number of participants who reported engaging in the activity.

between candidate effort and media effort. Of the 43 candidates who reported participating in television talk shows, 26 (60%) reported having done so at the request of a media organization. The difference is more staggering when it comes to the 117 candidates who were featured on radio talk shows. Of those 117, 56 (48%) reported having participated as a result of the news media asking for their involvement. A total of 58 candidates (50%) reported having done so based on their own effort to get on the air.

Public appearances (i.e., public speeches, broadcast debates, public debates that were not broadcast, and addressing a community group) were largely a result of the involvement of community, business, or activist groups; political parties; and other individuals or groups. Of the 249 candidates who engaged in public speeches, 138 (55%) report having done so by request of community, business, or activities groups. These groups were also cited by 41 of the 78 candidates (53%) who engaged in broadcast debates and 97 of the 140 candidates (69%) who engaged in public debates that were not broadcast. They were also instrumental in asking candidates to address community groups (63% of candidates who addressed such groups identified these groups as event initiators) or to fill out issues questionnaires (56% of candidates who filled out such questionnaires noted they were sent by such groups).

For communication events candidates did not engage in, understanding who attempted to initiate such events (if anyone) gives a broader picture as to who promotes campaign communications activities. Results, summarized in Table 5.13, demonstrate that candidates rarely turn down opportunities to engage in campaign activity. It seems that the only campaign activity candidates refuse to engage in but are nonetheless asked

Table 5.13. "For each of the following activities you indicated that your campaign did not engage in, please indicate, if any, of the following groups requested that you engage in the activity."

		Media News organization		A community, business, or activist group		A political party		You or your campaign organization		An opponent		Some other individual or group		Total*
		n	%	n	%	n	%	n	%	n	%	n	%	n
Television talk show		8	2			1	0	3	1	1	0	5	1	429
Radio talk show		6	2	1	0	1	0	7	2	--	--	4	1	355
Public speeches		--	--	11	5	8	4	7	3	1	0	3	1	223
Broadcast debates		2	1	4	1	--	--	--	--	--	--	3	1	394
Public debates that were not broadcast		1	0	8	2	2	1	2	1	--	--	4	1	332
Provide an interview to a journalist		7	3	3	1	--	--	2	1	--	--	--	--	260
Speak to an editorial board		3	1	1	0	--	--	1	0	--	--	1	0	329
Address a community group		5	3	52	29	19	10	24	13	3	2	16	9	182
Fill out an issues questionnaire		3	1	25	10	3	1	1	0	--	--	11	4	258

* Total refers to the total number of participants who reported engaging in the activity.

Note: Percentages take into account the number of participants who indicated the actor initiated the event out of the number of participants who reported engaging in the activity.

to do is addressing community groups. As the table shows, of the 182 candidates who did not address a community group, a sizeable portion (n = 52, 29%) were asked by community groups to do so. This result indicates that candidates are not always willing to get in front of any group that wants their presence.

Media relationship. Tables 5.14.1 and 5.14.2 summarize respondents' ratings of their relationships with the news media. Results suggest most candidates had a somewhat positive relationship with the media (M = 3.50, SD = 1.03), with less than 4% (n = 16) reporting a "very negative" relationship and only 11% (n = 53) reporting a "somewhat negative" relationship. Participants in partisan and non-partisan races reported more positive relationships with the media (M = 3.62, SD = 1.01; M = 3.57, SD = 1.07 respectively*)* than judges standing for retention (M = 3.30, SD = 0.89). Candidates for supreme court also reported more positive relationships with the media (M = 3.88, SD = 0.86) than candidates for appellate court (M = 3.47, SD = 0.87) and trial court (M = 3.50, SD = 1.03). For the most part, candidates fell squarely between neutral and somewhat positive on this measure.

In follow up interviews, candidates discussed the nearly symbiotic relationships formed with the media. "I develop[ed] relationships with reporters. I didn't give them anything I shouldn't have," explained Glenn Thompson, an Alabama trial court candidate. "I didn't speak out of turn. If I couldn't talk to them on the record, I'd at least make sure they understood the process and why I couldn't talk to them on the record and when I could give them a quote, I gave them a quote. And they loved me for it."

Although survey results show a generally positive relationship between candidates and the media, candidates found themselves frequently frustrated with the

Table 5.14.1. "Please rate your relationship with the news media during your campaign" (Percentages).*

	Very negative		Somewhat negative		Neither positive nor negative		Somewhat positive		Very positive		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	2	3	6	8	36	51	16	23	7	10	4	6
Partisan	2	2	9	9	34	35	28	29	22	23	2	2
Non-Partisan	5	2	33	16	44	22	77	38	40	20	2	1
Unspecified	7	7	5	5	43	42	21	20	15	15	12	12
Office sought												
Supreme Court	--	--	1	6	4	24	8	47	4	24	--	--
Appellate Court	1	2	2	4	23	50	13	28	6	13	1	2
Trial Court	9	3	39	13	92	31	99	33	51	17	6	2
Other			6	29	3	14	4	19	7	33	1	5
Unspecified	6	7	5	5	35	38	18	20	16	17	12	13
Incumbent												
Incumbent	--	--	9	8	38	36	33	31	25	24	1	1
Non-Incumbent	6	3	32	17	39	21	73	38	37	19	3	2
Unspecified	10	6	12	7	80	45	36	20	22	13	16	9
Elected												
Won	1	0	19	9	77	38	56	28	44	22	6	3
Lost	9	5	29	16	43	24	68	39	25	14	2	1
Unspecified	6	6	5	5	37	40	18	19	15	16	12	13
Total	16	3	53	11	157	33	142	30	84	18	20	4

* Excludes cases that had missing values for survey item (n = 20).

Table 5.14.2. "Please rate your relationship with the news media during your campaign" (Scale).*

	Scale*		
	n	**M**	**SD**
Election type			
Retention	67	3.30	0.89
Partisan	95	3.62	1.01
Non-Partisan	199	3.57	1.07
Unspecified	91	3.35	1.07
Office sought			
Supreme Court	17	3.88	0.86
Appellate Court	45	3.47	0.87
Trial Court	290	3.50	1.03
Other	20	3.60	1.27
Unspecified	80	3.41	1.11
Incumbent			
Incumbent	105	3.70	0.93
Non-Incumbent	187	3.55	1.09
Unspecified	160	3.30	1.01
Elected			
Won	197	3.62	0.95
Lost	174	3.41	1.09
Unspecified	81	3.38	1.09
Total	452	3.50	1.03

* Excludes cases that had missing values for survey item (n = 20).

media's endorsement of candidates (namely the opposition). Lawrence Praeger, a Texas Appellate Court candidate, described his dissatisfaction with the news media:

> “I had kind of a particularly testy relationship with [the media] because when I ran the first time, they were kind of condescending and when I ran a second time and they interviewed me - it was almost kind of humorous because they endorsed this lawyer - my opponent - who'd never tried any cases. I don't think he picked one jury in his life. They endorsed him because he was an energy lawyer - lobbyist - and then when they came back to me the second time around for an endorsement and I said to them - between the first election and the second election - an opinion came out from the court of appeals that he was on where they disqualified a judge or an arbitrator cause he had some relationship with an industry and so I pointed out to the editorial board. I said, ‘Well’ - they said, ‘Well what have they done wrong at the court?’ I said, ‘It's not what they've done wrong, it's what they've done right.’ I said, ‘They said this case came out and they said anyone who's this closely associated with these parties or litigants has to resign from this case and my opponent - he represented energy companies and there's not a lot of mom and pop energy houses out there so he'd have to resign from any energy case.’ And they said, ‘Well I have no problem with that - he'll do that.’ I said, ‘Well if he does that, that was the only reason you endorsed him last time’ (laughs).”

For others, the politics of the media was the source of frustration. “You have editorial boards that are (sighs) like any small community,” said Karen Klein, a Washington trial court candidate, “You have alliances and more old-boy networks.”

Media performance. Results pertaining to how well the media performed in terms of coverage of electoral contests are summarized in Table 5.15.1 and 5.15.2. Overall, candidates were slightly negative on this survey item (*M* = 2.90, *SD* = 1.18). Judges standing for retention were one of the few categories of candidates that had some more positive opinions of the media's performance (*M* = 3.34, *SD* = 1.16). Continuing to follow the same pattern, incumbents (*M* = 3.01, *SD* = 1.22) and election winners (*M* = 3.17, *SD* = 1.23) reported higher grades for the media's performance than non-incumbents (*M* = 2.76, *SD* = 1.13) and those defeated in the election (*M* = 2.61, *SD* = 1.04). Appellate court candidates were more critical of the media's performance (*M* = 2.66, *SD* = 1.13) than were trial court candidates (*M* = 2.93, *SD* = 1.19).

Results are surprising as more than half of all candidates reported receiving minimal or no coverage at all, which would inspire more critical evaluations of the media's performance. Candidates may have pulled their punches when it came to rating the media's performance because they did not expect coverage in the first place (nearly three out of four candidates reported that they did not expect to receive significant coverage). Beyond low expectations for receiving coverage, interviews revealed judicial candidates did not view the media as being a strong player in their elections regardless of the amount of coverage given. The day of the newspaper, they say, has ended:

- "Most people gravitated away from the newspapers and I don't think [they are] much of a factor" - Paul Kennedy, New Mexico Supreme Court candidate.
- "What goes on nowadays, I don't think newspapers have as much influence as they once did. I think it's decreasing" - Karen Klein, Washington trial court candidate.

Table 5.15.1. "On a scale from A to F, please rate the overall news media performance with regard to coverage of the electoral contest in which you participated" (Percentages).*

	A		B		C		D		F		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	12	17	13	18	19	27	11	15	3	4	13	18
Partisan	5	5	17	18	28	29	25	26	18	19	4	4
Non-Partisan	18	9	44	22	57	28	48	24	23	11	11	5
Unspecified	4	4	11	11	17	17	12	12	10	10	49	48
Office sought												
Supreme Court	--	--	5	29	4	24	7	41	1	6	--	--
Appellate Court	3	7	6	13	12	26	14	30	6	13	5	11
Trial Court	28	9	63	21	86	29	61	21	38	13	20	7
Other	3	14	2	10	3	14	8	38	2	10	3	14
Unspecified	5	5	9	10	16	17	6	7	7	8	49	53
Incumbent												
Incumbent	10	9	26	25	30	28	15	14	15	14	10	9
Non-Incumbent	13	7	36	19	55	29	56	29	25	13	5	3
Unspecified	16	9	23	13	36	20	25	14	14	8	62	35
Elected												
Won	28	14	48	24	54	27	29	14	22	11	22	11
Lost	6	3	29	16	52	30	59	34	24	14	6	3
Unspecified	5	5	8	9	15	16	8	9	8	9	49	53
Total	39	8	85	18	121	26	96	20	54	11	77	16

* Excludes cases that had missing values for survey item (n = 77).

Table 5.15.2. "On a scale from A to F, please rate the overall news media performance with regard to coverage of the electoral contest in which you participated" (Scale).*

	Scale*			Total
	n	M	SD	n
Election type				
Retention	58	3.34	1.16	71
Partisan	93	2.63	1.15	97
Non-Partisan	190	2.93	1.16	201
Unspecified	54	2.76	1.20	103
Office sought				
Supreme Court	17	2.76	0.97	17
Appellate Court	41	2.66	1.13	46
Trial Court	276	2.93	1.19	296
Other	18	2.78	1.31	21
Unspecified	43	2.98	1.22	92
Incumbent				
Incumbent	96	3.01	1.22	106
Non-Incumbent	185	2.76	1.13	190
Unspecified	114	3.02	1.22	176
Elected				
Won	181	3.17	1.23	203
Lost	170	2.61	1.04	176
Unspecified	44	2.86	1.25	93
Total	395	2.90	1.18	472

* Excludes cases that had missing values for survey item (n = 77).

- "The three candidates who won - the two Republicans and myself - got, I think, more newspaper endorsements than anybody else, but I thought we were told no one reads newspapers anymore, so I don't know what to make of it all" - Bridget Mary McCormack, Michigan Supreme Court candidate.

- "While we were successful at getting in the paper, I think that newspaper publicity had almost nothing to do with the outcome to my disappointment because most people don't even read it. And if they do, it's just the casual glance and it doesn't influence their vote" - Courtney McAllister, California trial court candidate.

Candidates were appreciative of gaining media coverage, but even for those who were not so quick to dismiss the influence of their local media, gauging the level of importance the news media play in judicial elections was beyond anyone's grasp.

Summary. As expected, few candidates earn substantial coverage from traditional media sources and few expect to gain any significant coverage. Despite the scant amount of coverage, candidates report few faults with the type of coverage they received. Though candidates find coverage inadequate, most do not see media coverage as being sensationalist, biased, or focused on strategy/horserace coverage. Overall, candidates have a somewhat positive relationship with the media though they rated media performance slightly negative. Candidates do everything they can to earn free media coverage, but as follow-up interviews revealed, several candidates do not find traditional media coverage essential to securing an electoral victory as media sources, specifically newspapers, have less influence in judicial elections than they once did.

Campaign Communication Methods

As discussed in Chapter Three, campaign communication media can be divided into three categories: earned or "free" media, paid media, and direct communications.

Earned or "free" media. Responses to survey items related to earned or "free" media are summarized in Tables 5.16.1 and 5.16.2. Judicial candidates engaged in several

Table 5.16.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Earned Media).

	Include a media coord-inator or press secretary on staff		Sent out press releases		Scheduled press con-ferences		Submitted OpEd pieces or letters to the editor		Television talk show	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	3	4	17	24	2	3	11	15	2	3
Partisan	12	12	37	38	11	11	21	22	17	18
Non-Partisan	26	13	107	53	8	4	69	34	20	10
Unspecified	9	9	20	19	2	2	13	13	4	4
Office sought										
Supreme Court	6	35	9	53	6	35	7	41	5	29
Appellate Court	9	20	16	35	1	2	7	15	3	7
Trial Court	28	9	129	44	10	3	83	28	27	9
Other	2	10	9	43	3	14	6	29	4	19
Unspecified	5	5	18	20	3	3	11	12	4	4
Incumbent										
Incumbent	9	8	35	33	5	5	22	21	8	8
Non-Incumbent	30	16	108	57	14	7	68	36	29	15
Unspecified	11	6	38	22	4	2	24	14	6	3
Elected										
Won	21	10	66	33	11	5	40	20	17	8
Lost	25	14	98	56	10	6	63	36	22	13
Unspecified	4	4	17	18	2	2	11	12	4	4
Total	50	11	181	38	23	5	114	24	43	9

campaign communication methods specifically designed to generate news coverage. The three most popular methods were providing an interview to a journalist (*n* = 212, 45%), sending out press releases (*n* = 181, 38%), and speaking to an editorial board (*n* = 143, 30%). Few candidates scheduled press conferences (*n* = 23, 4%), appeared on a

Table 5.16.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Earned Media). (cont.)

	Radio talk show		Provide an interview to a journalist		Speak to an editorial board	
	n	%	n	%	n	%
Election type						
Retention	12	17	19	27	11	15
Partisan	31	32	52	54	36	37
Non-Partisan	60	30	118	59	80	40
Unspecified	14	14	23	22	16	16
Office sought						
Supreme Court	5	29	13	76	14	82
Appellate Court	10	22	19	41	20	43
Trial Court	85	29	153	52	94	32
Other	6	29	8	38	3	14
Unspecified	11	12	19	21	12	13
Incumbent						
Incumbent	25	24	42	40	34	32
Non-Incumbent	64	34	125	66	81	43
Unspecified	28	16	45	26	28	16
Elected						
Won	51	25	80	39	50	25
Lost	55	31	112	64	82	47
Unspecified	11	12	20	22	11	12
Total	117	25	212	45	143	30

television talk show (*n* = 43, 9%), or included a media coordinator or press secretary on staff (*n* = 50, 11%). Despite their popularity, most of the "free" communication methods were rated as ineffective compared to paid media and direct communications. Press releases (*M* = 1.67, *SD* = 0.69), television talk shows (*M* = 1.86, *SD* = 0.65), radio talk

Table 5.16.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Earned Media).

	Include a media coordinator or press secretary on staff			Sent out press releases			Scheduled press conferences		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	2	2.50	0.71	14	1.50	0.65	1	3.00	--
Partisan	12	2.08	0.67	37	1.70	0.66	10	1.90	0.88
Non-Partisan	24	2.38	0.71	97	1.70	0.71	8	2.00	0.76
Unspecified	6	2.17	0.75	14	1.57	0.65	1	1.00	--
Office sought									
Supreme Court	6	2.00	0.63	9	1.78	0.83	6	1.50	0.55
Appellate Court	9	2.33	0.87	15	1.53	0.52	--	--	--
Trial Court	25	2.24	0.66	118	1.67	0.68	9	2.33	0.87
Other	2	3.00	0.00	9	2.00	0.87	3	2.33	0.58
Unspecified	2	2.50	0.71	11	1.55	0.69	2	1.00	0.00
Incumbent									
Incumbent	9	2.56	0.53	31	2.06	0.73	5	2.40	0.89
Non-Incumbent	28	2.21	0.74	102	1.61	0.65	13	1.77	0.73
Unspecified	7	2.14	0.69	29	1.48	0.63	2	2.00	1.41
Elected									
Won	21	2.62	0.59	60	1.87	0.77	9	2.44	0.88
Lost	22	1.95	0.65	91	1.55	0.60	10	1.60	0.52
Unspecified	1	2.00	--	11	1.64	0.67	1	1.00	--
Total	44	2.27	0.69	162	1.67	0.69	20	1.95	0.83

shows (*M* = 1.87, *SD* = 0.65), and even providing an interview to a journalist (*M* = 1.89, *SD* = 0.67) had overall effectiveness scores toward the "non-effective" side of the scale. Only two methods within this category - include a media coordinator or press secretary on staff (*M* = 2.27, *SD* = 0.69) and speak to an editorial board (*M* = 2.02, *SD* = 0.77) - were viewed as being somewhat effective.

Table 5.16.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Earned Media). (cont.)

	Submitted OpEd pieces or letters to the editor			Television talk show			Radio talk show		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	10	2.10	0.88	2	2.50	0.71	11	1.82	0.60
Partisan	21	2.10	0.70	17	1.76	0.66	30	1.77	0.68
Non-Partisan	65	1.94	0.73	20	1.90	0.64	57	1.98	0.64
Unspecified	7	2.14	0.69	3	1.67	0.58	8	1.50	0.53
Office sought									
Supreme Court	7	1.71	0.95	5	1.80	0.84	5	1.80	0.84
Appellate Court	7	1.86	0.90	3	1.67	1.15	10	2.00	0.82
Trial Court	78	2.01	0.69	27	1.96	0.59	81	1.86	0.61
Other	6	2.17	0.75	4	1.50	0.58	5	2.00	1.00
Unspecified	5	2.20	0.84	3	1.67	0.58	5	1.60	0.55
Incumbent									
Incumbent	22	2.23	0.69	8	1.88	0.64	25	1.80	0.58
Non-Incumbent	64	1.91	0.71	29	1.86	0.64	60	1.97	0.69
Unspecified	17	2.06	0.83	5	1.80	0.84	21	1.67	0.58
Elected									
Won	39	2.31	0.66	17	1.94	0.75	50	2.02	0.65
Lost	59	1.78	0.70	22	1.82	0.59	51	1.75	0.63
Unspecified	5	2.20	0.84	3	1.67	0.58	5	1.60	0.55
Total	103	2.00	0.73	42	1.86	0.65	106	1.87	0.65

Judges standing for retention were less likely to engage in any of these campaign communication methods, likely due to campaign restrictions (i.e., some states bar retention candidates from campaigning unless substantial opposition to their retention exists) or the perception that retention is guaranteed.

Table 5.16.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Earned Media). (cont.)

	Provide an interview to a journalist			Speak to an editorial board		
	n	**M**	**SD**	**n**	**M**	**SD**
Election type						
Retention	17	1.94	0.56	9	1.78	0.83
Partisan	51	1.90	0.73	36	1.75	0.73
Non-Partisan	110	1.92	0.65	77	2.12	0.74
Unspecified	16	1.56	0.63	11	2.36	0.81
Office sought						
Supreme Court	13	1.85	0.69	14	2.14	0.66
Appellate Court	19	1.95	0.85	20	2.05	0.69
Trial Court	142	1.91	0.64	89	1.96	0.80
Other	8	1.88	0.83	3	2.00	1.00
Unspecified	12	1.58	0.51	7	2.43	0.79
Incumbent						
Incumbent	39	1.95	0.76	34	2.12	0.69
Non-Incumbent	119	1.91	0.64	78	1.97	0.77
Unspecified	36	1.75	0.65	21	2.00	0.89
Elected						
Won	77	2.03	0.67	49	2.27	0.73
Lost	104	1.83	0.66	78	1.85	0.74
Unspecified	13	1.54	0.52	6	2.17	0.98
Total	194	1.89	0.67	133	2.02	0.77

Supreme court candidates more frequently engaged in these activities compared to candidates for other levels of judicial office, whereas appellate court candidates showed a lack of effort to gain free media. Slightly more than a third of appellate candidates (*n* = 16, 35%) reported sending press releases, far fewer than their supreme court and trial court counterparts (*n* = 9, 53%; *n* = 129, 44% respectively). This pattern emerged across

other communication methods as well. Appellate court candidates trailed behind supreme and trial court candidates in terms of submitting OpEd pieces or letters to the editor, engaging in television talk shows, engaging in radio talk shows, and providing interviews to journalists.

Differences across incumbency status and electoral outcome demonstrated a singular, strong pattern: non-incumbents and defeated candidates report engaging in all of these activities at a higher frequency than incumbents and election winners. This finding reflects the up-hill battle these candidates ultimately face. Non-incumbents simply do not have the name recognition as most incumbents enjoy and must therefore try to generate as much awareness of themselves as they possibly can.

Variations in effectiveness scores based on election type are difficult to interpret given the small number of retention candidates who reported having engaged in these methods. In most cases, differences in mean scores are slight enough to suggest little variation exists among effectiveness scores as a result of election type. This holds true for office sought as well, as slight variations are present within the data, but the limited number of cases makes it difficult to make substantial conclusions.

Non-incumbents also gave lower effectiveness ratings on all of these methods compared to incumbents except for radio talk shows; a finding that escapes explanation within this study. Defeated candidates rated all of these methods lower in terms of effectiveness than did election winners, which should come as no surprise.

Paid media. Paid media was similarly popular among candidates, as Tables 15.17.1 and 15.7.2 show. Overall, nearly one out of every five judicial candidates (n = 86, 18%) reported having used paid television advertising in their campaign. This form of

Table 5.17.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Paid Media).

	Paid television advertising		Paid radio advertising		Paid newspaper advertising		Paid outdoor advertising	
	n	%	n	%	n	%	n	%
Election type								
Retention	7	10	12	17	19	27	15	21
Partisan	23	24	45	46	61	63	44	45
Non-Partisan	45	22	86	43	110	55	72	36
Unspecified	11	11	13	13	20	19	17	17
Office sought								
Supreme Court	10	59	9	53	7	41	5	29
Appellate Court	12	26	17	37	14	30	12	26
Trial Court	53	18	114	39	160	54	110	37
Other	2	10	7	33	14	67	10	48
Unspecified	9	10	9	10	15	16	11	12
Incumbent								
Incumbent	24	23	35	33	51	48	29	27
Non-Incumbent	43	23	93	49	119	63	88	46
Unspecified	19	11	28	16	40	23	31	18
Elected								
Won	34	17	65	32	91	45	51	25
Lost	45	26	84	48	104	59	85	48
Unspecified	7	8	7	8	15	16	12	13
Total	86	18	156	33	210	44	148	31

campaign communication was most frequently used by supreme court candidates (*n* = 10, 59%), though more than one quarter of appellate court candidates (*n* = 12, 26%) reported having used paid television advertising. Paid television advertising was expectedly less popular with trial court candidates, with less than one out of five (*n* = 53, 18%) reporting having used such ads in their campaigns. Compared to paid television advertising, paid radio advertising was a stronger focal point for appellate and trial court candidates

Table 5.17.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Paid Media).

	Paid television advertising			Paid radio advertising			Paid newspaper advertising		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	7	2.00	0.58	10	1.90	0.57	17	2.29	0.59
Partisan	23	2.35	0.49	43	2.12	0.63	61	1.85	0.68
Non-Partisan	43	2.30	0.77	83	2.10	0.66	104	1.88	0.64
Unspecified	7	2.71	0.49	8	2.00	0.53	14	2.07	0.47
Office sought									
Supreme Court	10	2.50	0.71	9	2.00	0.71	7	1.86	0.69
Appellate Court	12	2.50	0.67	17	2.18	0.39	14	1.86	0.77
Trial Court	51	2.25	0.66	107	2.07	0.65	151	1.93	0.65
Other	2	1.50	0.71	7	2.14	0.90	14	1.86	0.53
Unspecified	5	2.60	0.55	4	2.25	0.50	10	2.10	0.57
Incumbent									
Incumbent	23	2.48	0.59	32	2.25	0.62	51	2.02	0.65
Non-Incumbent	42	2.26	0.73	91	2.03	0.66	113	1.81	0.65
Unspecified	15	2.27	0.59	21	2.05	0.50	32	2.19	0.54
Elected									
Won	33	2.52	0.57	61	2.25	0.57	91	2.14	0.62
Lost	44	2.16	0.71	81	1.95	0.65	96	1.71	0.61
Unspecified	3	2.67	0.58	2	2.50	0.71	9	2.00	0.50
Total	80	2.33	0.67	144	2.08	0.63	196	1.92	0.65

(*n* = 17, 37%; *n* = 114, 39% respectively). Paid newspaper advertising and paid outdoor advertising were used infrequently by supreme (*n* = 7, 41%; *n* = 14, 30% respectively*)* and appellate court candidates (*n* = 14, 30%; *n* = 12, 26% respectively). In contrast, trial court candidates made significant use of these methods (*n* = 160, 54% used paid newspaper advertising; *n* = 110, 37% used paid outdoor advertising).

Table 5.17.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Paid Media). (cont.)

	Paid outdoor advertising		
	n	**M**	**SD**
Election type			
Retention	12	2.08	0.67
Partisan	41	2.10	0.77
Non-Partisan	64	2.19	0.61
Unspecified	12	2.50	0.52
Office sought			
Supreme Court	5	1.60	0.55
Appellate Court	11	2.27	0.79
Trial Court	96	2.14	0.66
Other	10	2.60	0.52
Unspecified	7	2.43	0.53
Incumbent			
Incumbent	28	2.07	0.77
Non-Incumbent	78	2.19	0.65
Unspecified	23	2.26	0.62
Elected			
Won	47	2.43	0.65
Lost	75	2.01	0.65
Unspecified	7	2.29	0.49
Total	129	2.18	0.67

As Table 15.17.1 shows, candidates competing in partisan and non-partisan elections used paid media similarly (e.g., a similar amount of partisan candidates (*n* = 23, 24%) and non-partisan candidates (*n* = 45, 22%) purchased television advertising) in contrast to judges standing for retention (e.g., only 10% (*n* = 7) of judges standing for retention purchased television advertising). Partisan candidates outnumbered their non-partisan counterparts across all forms of paid media. Non-incumbents (except in

the case of paid television advertising) and candidates defeated in the election also reported greater frequency of use across all forms of paid media compared to incumbents and election winners.

Overall, candidates rate paid media, aside from paid newspaper advertising, to be slightly above "somewhat effective." Out of all of the campaign communication methods addressed by the survey, paid television advertising was ranked similarly in terms of overall effectiveness (M = 2.33, SD = 0.67) to direct mail (M = 2.37, SD = 0.64) and personal canvassing (door-to-door) (M = 2.53, SD = 0.66). Television advertising was reported as particularly effective for supreme court and appellate court candidates (M = 2.50, SD = 0.71; M = 2.50, SD = 0.67 respectively). More surprising, however, is that candidates who won and those who lost both considered television commercials effective (M = 2.52, SD = 0.57; M = 2.16, SD = 0.71 respectively).

Other forms of paid media were not rated as highly, though most were considered beyond "somewhat effective" overall. Few differences across election type, office sought, incumbency status, or electoral outcome were found for paid radio advertising. Paid newspaper advertising fell toward "not very effective" overall (M = 1.92, SD = 0.65), though judges standing for retention found that method largely effective (M = 2.29, SD = 0.59). Paid outdoor advertising was also favored by appellate court candidates (M = 2.27, SD = 0.79), though supreme court candidates saw otherwise (M = 1.60, SD = 0.55).

Although candidates openly expressed their inability to gauge the effectiveness of their campaign methods (discussed later in this section), few were skeptical of the power of paid advertising, particularly television advertising. For most candidates, television advertising was seen as the be-all, end-all campaign method. James Rowe, a West

Virginia Supreme Court candidate, exemplifies this viewpoint. “I think it still boils down basically to TV as opposed to other [methods] … Some old political type said, ‘TV, TV, TV,’ - that's what it all boils down to and he was right.” Ann Crawford McClure echoed and expanded on this perspective, claiming, “I could not have won without TV ads. Simply put.”

Candidates who found paid media ineffective at carrying their campaign messages cited channel and price limitations, as well as dwindling audiences, as reasons to doubt their influence in turning out voters. “Some of the other candidates - including the one I ran against - he did a lot of billboards - I don't think those are very effective because it doesn't give enough context for people to understand who you are or what it is you're running for,” Darren Kugler explained, noting the lack of available space (or bandwidth) of some forms of paid media. Tod Daniel noted the rise in costs associated with paid media: “The newspaper has priced itself out of business. And then the radio station is about the only thing that's affordable.” Others, such as Glenn Thompson, claimed the rise of competing media is driving away traditional media audiences. “Now, with the influx of XM radio, iPads, MP3s - a lot of people really don't listen to the radio,” said Thompson.

Direct communication. Direct communication methods were also well-used by candidates, as summarized in Tables 15.18.1 and 15.8.2. Yard signs dominated this category of communication methods, with 289 candidates (61%) having used this method. Other popular methods included attending news events or public forums (*n* = 275, 58%) campaign literature/brochures distribution (*n* = 275, 58%), campaign website or blog (*n* = 266, 56%), social media (*n* = 249, 53%), public speeches (*n* = 249, 53%), and direct mail

Table 5.18.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Direct Communication).

	Attended news events or public forums		Direct mail		Telephone		Yard Signs		Personal can-vassing (door-to-door)	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	24	34	19	27	11	15	24	34	15	21
Partisan	71	73	65	67	45	46	78	80	59	61
Non-Partisan	149	74	126	63	69	34	152	76	102	51
Unspecified	31	30	28	27	23	22	35	34	26	25
Office sought										
Supreme Court	11	65	9	53	8	47	12	71	3	18
Appellate Court	26	57	17	37	10	22	22	48	12	26
Trial Court	203	69	176	59	100	34	211	71	148	50
Other	12	57	14	67	13	62	19	90	18	86
Unspecified	23	25	22	24	17	18	25	27	21	23
Incumbent										
Incumbent	60	57	50	47	26	25	63	59	39	37
Non-Incumbent	158	83	139	73	86	45	165	87	120	63
Unspecified	57	32	49	28	36	20	61	35	43	24
Elected										
Won	111	55	92	45	54	27	117	58	80	39
Lost	142	81	124	70	78	44	147	84	104	59
Unspecified	22	24	22	24	16	17	25	27	18	19
Total	275	58	238	50	148	31	289	61	202	43

(*n* = 238, 50%). Among the least popular direct communications were broadcast debates (*n* = 78, 17%), campaign staff canvassing (door-to-door) (*n* = 131, 28%), and public debates that were not broadcast (*n* = 140, 30%).

Table 5.18.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Direct Communication). (cont.)

	Campaign staff can-vassing (door-to-door)		Campaign literature/ brochures dis-tribution		Campaign website/ blog		E-mail		Social media online such as Facebook or Twitter	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	10	14	22	31	22	31	17	24	19	27
Partisan	37	38	76	78	69	71	64	66	70	72
Non-Partisan	66	33	147	73	147	73	128	64	133	66
Unspecified	18	17	30	29	28	27	24	23	27	26
Office sought										
Supreme Court	3	18	11	65	15	88	14	82	13	76
Appellate Court	9	20	25	54	27	59	25	54	19	41
Trial Court	98	33	202	68	193	65	165	56	183	62
Other	9	43	16	76	10	48	11	52	12	57
Unspecified	12	13	21	23	21	23	18	20	22	24
Incumbent										
Incumbent	25	24	59	56	56	53	49	46	52	49
Non-Incumbent	76	40	163	86	159	84	141	74	148	78
Unspecified	30	17	53	30	51	29	43	24	49	28
Elected										
Won	44	22	109	54	106	52	85	42	96	47
Lost	74	42	145	82	139	79	130	74	132	75
Unspecified	13	14	21	23	21	23	18	19	21	23
Total	131	28	275	58	266	56	233	49	249	53

Personal canvassing (M = 2.53, SD = 0.66), direct mail (M = 2.37, SD = 0.64), and addressing community groups (M = 2.31, SD = 0.67) were seen as some of the most effective at getting candidates' campaign message out to voters. Few methods' overall

Table 5.18.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Direct Communication). (cont.)

	Public speeches		Broadcast debates		Public debates that were not broadcast		Address a commun-ity group		Fill out an issues ques-tionnaire	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	23	32	5	7	6	8	26	37	19	27
Partisan	73	75	17	18	31	32	77	79	53	55
Non-Partisan	127	63	48	24	90	45	156	78	120	60
Unspecified	26	25	8	8	13	13	31	30	22	21
Office sought										
Supreme Court	14	82	4	24	5	29	12	71	14	82
Appellate Court	24	52	9	20	17	37	29	63	24	52
Trial Court	182	61	56	19	106	36	210	71	154	52
Other	10	48	2	10	2	10	16	76	5	24
Unspecified	19	21	7	8	10	11	23	25	17	18
Incumbent										
Incumbent	57	54	11	10	25	24	59	56	50	47
Non-Incumbent	141	74	54	28	93	49	172	91	122	64
Unspecified	51	29	13	7	22	13	59	34	42	24
Elected										
Won	102	50	23	11	56	28	116	57	83	41
Lost	127	72	49	28	76	43	151	86	113	64
Unspecified	20	22	6	6	8	9	23	25	18	19
Total	249	53	78	17	140	30	290	61	214	45

effectiveness scores dipped below "somewhat effective." The mean rating on campaign websites (M = 1.93, SD = 0.66), broadcast debates (M = 1.97, SD = 0.66), public debates that were not broadcast (M = 1.90, SD = 0.74), and issue questionnaires (M = 1.71, SD = 0.67) fell on the "not effective" side of the scale.

Table 5.18.1. "Please indicate which of the following forms of campaign communications were used/engaged in during your campaign" (Direct Communication). (cont.)

	Other	
	n	%
Election type		
Retention	13	18
Partisan	7	7
Non-Partisan	11	5
Unspecified	3	3
Office sought		
Supreme Court	--	--
Appellate Court	7	15
Trial Court	25	8
Other	--	--
Unspecified	2	2
Incumbent		
Incumbent	6	6
Non-Incumbent	13	7
Unspecified	15	9
Elected		
Won	22	11
Lost	9	5
Unspecified	3	3
Total	34	7

As with earned media, judges standing for retention reported less use of all direct communication methods than did candidates in partisan and non-partisan races. Appellate court candidates were last in the use of almost every direct communication method though differences among groups were sometimes small. In the one exception to the rule of appellate court judges trailing the pack, canvassing was less popular among

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication).

	Attended news events or public forums			Direct mail			Telephone		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	22	1.86	0.56	17	2.41	0.71	8	2.25	0.89
Partisan	70	1.90	0.75	65	2.45	0.64	44	2.18	0.76
Non-Partisan	140	2.04	0.67	119	2.35	0.63	60	2.05	0.65
Unspecified	25	2.08	0.64	19	2.16	0.60	17	1.71	0.59
Office sought									
Supreme Court	11	1.91	0.70	9	2.44	0.53	8	2.25	0.71
Appellate Court	24	1.96	0.62	17	2.29	0.59	10	2.10	0.88
Trial Court	194	1.98	0.69	166	2.37	0.65	87	2.03	0.71
Other	12	2.17	0.72	14	2.57	0.65	13	2.31	0.63
Unspecified	16	2.00	0.63	14	2.14	0.66	11	1.82	0.60
Incumbent									
Incumbent	56	1.93	0.71	49	2.41	0.61	24	2.17	0.70
Non-Incumbent	152	2.02	0.70	133	2.38	0.65	79	2.09	0.70
Unspecified	49	1.96	0.58	38	2.26	0.64	26	1.88	0.71
Elected									
Won	105	2.09	0.68	89	2.58	0.56	48	2.35	0.73
Lost	136	1.92	0.69	118	2.24	0.65	71	1.90	0.64
Unspecified	16	1.94	0.57	13	2.08	0.64	10	1.80	0.63
Total	257	1.99	0.68	220	2.37	0.64	129	2.06	0.70

supreme court candidates than appellate or trial court contenders. Filling out issues questionnaires was commonplace for supreme court candidates compared to appellate and trial court candidates.

Supreme court candidates found a number of direct methods less effective than their counterparts. Yard signs, public speeches, broadcast debates, and public debates that

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication). (cont.)

	Yard signs			Personal canvassing (door-to-door)			Campaign staff canvassing (door-to-door)		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	23	2.35	0.57	15	2.47	0.74	9	2.44	0.53
Partisan	78	2.12	0.70	58	2.47	0.71	37	2.24	0.72
Non-Partisan	149	2.30	0.64	96	2.59	0.59	61	2.34	0.68
Unspecified	26	2.23	0.59	20	2.45	0.76	12	2.33	0.78
Office sought									
Supreme Court	12	1.83	0.58	3	3.00	0.00	3	2.67	0.58
Appellate Court	22	2.05	0.72	12	2.42	0.90	9	2.33	0.87
Trial Court	207	2.27	0.63	142	2.48	0.66	91	2.25	0.69
Other	19	2.53	0.77	18	2.94	0.24	9	2.56	0.53
Unspecified	16	2.19	0.54	14	2.50	0.65	7	2.71	0.49
Incumbent									
Incumbent	62	2.26	0.68	36	2.36	0.64	25	2.16	0.62
Non-Incumbent	163	2.24	0.67	116	2.61	0.63	71	2.35	0.72
Unspecified	51	2.25	0.59	37	2.43	0.73	23	2.39	0.66
Elected									
Won	115	2.37	0.66	78	2.59	0.61	43	2.47	0.59
Lost	145	2.15	0.65	99	2.47	0.69	69	2.19	0.73
Unspecified	16	2.19	0.54	12	2.58	0.67	7	2.71	0.49
Total	276	2.25	0.65	189	2.53	0.66	119	2.32	0.69

were not broadcast were all rated less effective by supreme court candidates than other candidates, suggesting that these methods have a greater impact on smaller races.

A familiar pattern emerged across incumbency status and electoral outcome: non-incumbents and defeated candidates reported higher levels of use for every direct communication method than did incumbents and election winners. However,

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication). (cont.)

	Campaign literature/ brochures distribution			Campaign website/ blog			E-mail		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	21	2.48	0.51	21	1.86	0.73	16	1.94	0.77
Partisan	75	2.19	0.63	69	1.74	0.53	63	2.11	0.57
Non-Partisan	139	2.26	0.61	141	2.05	0.67	119	2.03	0.66
Unspecified	24	2.13	0.68	20	1.80	0.77	18	1.83	0.79
Office sought									
Supreme Court	11	2.00	0.63	15	2.07	0.70	13	2.00	0.41
Appellate Court	25	2.16	0.55	26	1.88	0.65	24	1.96	0.69
Trial Court	192	2.24	0.61	187	1.94	0.66	156	2.06	0.65
Other	16	2.63	0.62	10	1.80	0.63	11	1.91	0.83
Unspecified	15	2.13	0.64	13	1.85	0.69	12	1.92	0.79
Incumbent									
Incumbent	58	2.28	0.62	54	1.93	0.67	45	2.00	0.64
Non-Incumbent	155	2.23	0.62	155	1.97	0.64	136	2.08	0.64
Unspecified	46	2.26	0.61	42	1.79	0.72	35	1.89	0.72
Elected									
Won	108	2.34	0.61	102	1.90	0.67	79	2.16	0.65
Lost	136	2.19	0.60	136	1.96	0.65	125	1.96	0.64
Unspecified	15	2.00	0.65	13	1.85	0.69	12	1.92	0.79
Total	259	2.24	0.62	251	1.93	0.66	216	2.03	0.66

effectiveness ratings were largely similar between incumbents and non-incumbents. Defeated candidates frequently rated direct methods as less effective than did elected candidates.

One commonality that most direct methods possess is the potential capability for the candidate to gauge effectiveness of the method. If candidates encounter nothing but

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication). (cont.)

	Social media online such as Facebook or Twitter			Public speeches			Broadcast debates		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	18	2.22	0.73	20	2.15	0.75	5	2.20	1.10
Partisan	70	2.03	0.70	72	2.10	0.67	16	1.94	0.77
Non-Partisan	129	2.10	0.68	124	2.20	0.65	45	1.93	0.78
Unspecified	19	1.68	0.58	18	2.28	0.57	5	2.20	0.84
Office sought									
Supreme Court	13	2.15	0.55	14	1.86	0.77	4	1.50	0.58
Appellate Court	19	1.84	0.69	24	2.04	0.62	9	2.00	0.71
Trial Court	178	2.09	0.72	176	2.20	0.65	52	1.98	0.83
Other	12	2.08	0.51	9	2.33	0.87	2	3.00	0.00
Unspecified	14	1.79	0.58	11	2.27	0.47	4	1.75	0.50
Incumbent									
Incumbent	50	1.96	0.73	56	2.04	0.69	10	2.00	0.82
Non-Incumbent	146	2.12	0.67	138	2.22	0.65	51	1.94	0.79
Unspecified	40	1.95	0.71	40	2.18	0.64	10	2.10	0.88
Elected									
Won	93	2.11	0.68	99	2.24	0.62	22	2.32	0.78
Lost	130	2.05	0.70	123	2.11	0.70	46	1.83	0.77
Unspecified	13	1.77	0.60	12	2.25	0.45	3	1.67	0.58
Total	236	2.06	0.69	234	2.17	0.66	71	1.97	0.79

voters who slam the door in their face, they can gather how well they stand in the election (whether they are accurate or not). E-mail and other web-based technologies allow for feedback, traffic monitoring, and other measures that allow a candidate to gather how well their message is being received. Candidates were fond of methods whose reception could be quantified. "I think sending e-mail letters out [was successful] because [we]

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication). (cont.)

	Public debates that were not broadcast			Address a community group			Fill out an issues questionnaire		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	5	1.80	0.84	24	2.29	0.69	17	1.82	0.64
Partisan	31	1.87	0.81	75	2.25	0.62	53	1.66	0.65
Non-Partisan	84	1.90	0.69	149	2.33	0.69	112	1.72	0.69
Unspecified	10	2.00	0.94	24	2.42	0.72	18	1.67	0.69
Office sought									
Supreme Court	5	1.40	0.55	12	1.92	0.67	14	1.79	0.70
Appellate Court	17	2.00	0.79	29	2.14	0.64	23	1.61	0.72
Trial Court	99	1.92	0.72	200	2.34	0.67	145	1.71	0.66
Other	2	2.50	0.71	15	2.40	0.63	5	2.00	0.71
Unspecified	7	1.57	0.79	16	2.56	0.63	13	1.69	0.75
Incumbent									
Incumbent	24	1.75	0.74	59	2.22	0.72	48	1.73	0.71
Non-Incumbent	88	1.95	0.73	163	2.34	0.64	116	1.71	0.66
Unspecified	18	1.83	0.79	50	2.32	0.71	36	1.69	0.67
Elected									
Won	55	2.09	0.70	114	2.47	0.63	80	1.90	0.69
Lost	70	1.80	0.73	142	2.16	0.68	106	1.58	0.62
Unspecified	5	1.20	0.45	16	2.50	0.63	14	1.64	0.74
Total	130	1.90	0.74	272	2.31	0.67	200	1.71	0.67

could measure the percentage of how many people opened it," said one Texas appellate court candidate.

There is a general sense that despite their limitations (and relatively low effectiveness ratings from candidates), electronic communications are the future for campaigns. Seasoned Kentucky Supreme Court candidate Janet Stumbo noted the shift in

Table 5.18.2. "Please indicate how effective the following forms of campaign communications were in disseminating your message to potential voters" (Direct Communication). (cont.)

	Other		
	n	**M**	**SD**
Election type			
Retention	--	--	--
Partisan	4	2.50	1.00
Non-Partisan	5	2.20	0.84
Unspecified	3	1.67	0.58
Office sought			
Supreme Court	--	--	--
Appellate Court	2	2.00	1.41
Trial Court	7	2.43	0.79
Other	1	2.00	--
Unspecified	2	1.50	0.71
Incumbent			
Incumbent	3	2.00	1.00
Non-Incumbent	7	2.43	0.79
Unspecified	2	1.50	0.71
Elected			
Won	2	3.00	0.00
Lost	8	2.13	0.83
Unspecified	2	1.50	0.71
Total	12	2.17	0.83

media use across generations: "It used to be that we relied very heavily on direct mail and that was extremely effective. I think its effectiveness has lessened in that people basically don't pay attention to hard copy mail except for the older generations ... it's all electronic communications."

Despite the popularity of electronic communications as a means to wage a campaign, candidates appear cautious to claim e-mails, websites, and social media

profiles are powerfully influential. For one Texas Appellate Court candidate, electronic communications were just one way to convey some "life" in the campaign: "We had a Facebook page and a website but I think both of them had sort of a flavor of the month quality of being 'Okay, we're with it here,' but I don't think they had that big of an impact relative to the more old-fashioned things at this time."

Gauging communication effectiveness. Follow up interviews demonstrated the difficulty candidates have when it comes to gauging the effectiveness of specific campaign communication methods. Campaign methods that allowed for feedback (either through direct observation or through quantitative reports) were prized; however, most candidates felt as though they were "operating in the dark."

***Feedback*.** Methods that allowed for feedback were frequently considered effective, whereas candidates had a much more difficult time assessing the impact of other campaign communication methods (as discussed below). Without specifically recognizing the value he placed on feedback, Allen Miller, a Washington trial court candidate, described what he felt were the most effective methods he used in his campaign: "Probably the most effective was attending the various places where people gathered who were obviously interested in voting because they were at these various rallies. And then, I guess, doorbelling would be next just because it appeared that people enjoyed meeting the candidate face-to-face … And we did get comments through the website and through the Facebook page."

Beyond merely allowing candidates to observe audience reactions, channels that allowed for interaction were also desirable to candidates. "I felt that the most successful [methods] were any opportunities or forums where I had to actually be able to get out and

interact with people face-to-face" John Henry explained. "Even if it was nothing more than speaking to them as a group - I felt like that was more effective than things like mailers."

Aside from methods that allowed for direct observation of feedback, candidates also prized methods that allowed for quantification of feedback. "I was able to see how many hits [on the website] I was getting on how many days and all of those kinds of things," explained Mindy Barry. "As compared to how many people who heard me speak at an event and paid attention - I definitely feel that the website was effective."

"In the dark." Candidates who used traditional mass media methods had virtually no basis from which to assess effectiveness. Susan Burch, a seasoned judicial election veteran who ran for a North Carolina trial court in 2012, provided a clear demonstration of this: "In past years, I've done television ads. I don't really have a sense of how successful that was."

Candidates expressed their frustration with gauging how effective their campaign communications were. John Baker, an Indiana Appellate Court candidate, exemplifies this vexation: "You just do the best you can and flail around and flail around and flail around and then see how it works out." Bridget McCormack, who was elected to Michigan's Supreme Court in 2012, even admitted feeling "in the dark" as to what methods worked for her campaign: "I don't know. I have no idea how to measure what worked and what didn't to be perfectly honest. I really don't know."

Even with campaign methods that allow for a degree of feedback, candidates express difficulty in determining whether engaging voters translates to electoral success. "You never know whether what you're doing in your campaign is helping," Robert

Schaffer, a Texas trial court candidate admitted. “If I go to an event every night over a three or four month period of time, will that help me more than staying at home and being with family and helping with homework and doing other stuff? You just don't know if what you're doing is helpful and there's no way of really gauging it.”

Outside of targeted mailing, candidates have little to go on in determining whether their campaign activities reach likely voters. “Going to general events, such as non-political-type public events - the farmer's market, Kiwanis events,” John Henry explains, “Those sorts of events are - it's hard to get a good read on how effective that is because you don't know how many likely voters you're talking to. It's good publicity. It's good opportunity to see a lot of the public but it's harder to know if you're actually getting much in the way of results … you feel like you're operating in the dark a lot. You really don't know how effective you're being in what you're doing.”

Method selection. The reasons why candidates choose specific campaign communication methods fell into five general categories: cost effectiveness, ability to target communications, media richness, the influence of perceived experts, and the expectations of voters.

Cost effectiveness. For most candidates, the mix of communication methods was determined by their budget. “[It] was not all that difficult because I was on a real tight budget,” said Steven Burk, a Florida trial court candidate, “So, it's not like I had a wide selection of things to do.” David Towler, a Texas Appellate Court candidate similarly noted how his campaign budget dictated the campaign media he used: “If there was a single biggest criteria for my campaign [methods] - it was budget and not effectiveness.”

Focusing strictly on the cost of campaign media was crucial for candidates facing competition in both primary and general elections. Elizabeth Best, a Montana Supreme Court candidate, knew having a reserve available to purchase great media buys in the general election was important: “We were strategic about the media that we had bought before the primary and were thinking in terms of needing to keep a cache available for the general.”

Beyond budget considerations, Frank Supercinski, a Texas Appellate Court candidate, took into account the perceived effectiveness of campaign media: “The main reason I chose going those methods was trying to get the most bang for the buck.” Mindy Barry, a Michigan Supreme Court candidate, likewise sought a budget-friendly campaign method capable of reaching scores of voters: “My husband built me a website. I think he did it from GoDaddy for like $75 or something and he did that. And so the website was obviously something that we thought could reach as many people as possible at the lowest cost.”

Ability to target communications. Others, such as New Mexico Supreme Court candidate, Paul Kennedy, focused entirely on the potential reach of the medium: “We decided as early as we could - we decided that the only effective way to reach voters in general and targeted populations was by direct mail. So that's pretty much everything we concentrated on - it was direct mail.”

The ability to target likely voters with direct mail made this particular method attractive and popular. Candidates, such as Dean Van Dress, an Ohio trial court candidate, honed in on likely voters through direct mail: “What I did with my limited amount of funds is I was able to send out direct mail to 60,000 people who actually requested the

absentee ballot with the hopes that those people would actually vote as opposed to trying to advertise or trying to contact people and have a 50% chance that those people would vote."

Beyond simply contacting absentee voters, candidates used sophisticated targeting techniques through the use of electronic voter databases. "The direct mailing was very successful because I used Votebuilder, which is provided by the Democratic party," explained Darren Kugler, a New Mexico trial court candidate. "I think that was developed largely from some of the new blood that President Obama brought in and got modern technology involved in how you run campaigns and Votebuilder allows you to develop very focused voter lists to target voters and I used that for my mailers."

Direct mail has become such a popular campaign method that it has become an industry in and of itself. Chris Cobey, a trial court candidate, described the direct mail scene in California: "In the past, California campaigns you'd have something called 'slate mailers' where you can buy the designation for your office on a postcard that maybe goes to all Democratic voters, all Republican voters, all environmental voters. You can slice and dice the electorate however you want. And I got a lot of solicitations for those … 'Time's running out - do you want to be on the card? It's going to cost you $12,000. Well we've got a special deal now it's $10. Now it's $8. Now it's $5.'"

Despite many candidates' fondness of direct mail's ability to target specific types of voters, some doubt the effectiveness of this campaign method, particularly in a busy election year as voters can become saturated with campaign mailers. "Anyone would go to their post office box or go to their mailbox on any given day and there would be three to six, what I call, 'slick pieces of mail,'" said Alabama trial court candidate, Glenn

Thompson. “I'm talking about high quality printing, color, professionally done, really nice pieces. There were so many pieces of mail that if you were at a post office box at a post office, you'd stop at the garbage can before you got in your car and just dump all that stuff in the garbage can. I saw that happen over and over again.”

Media richness. The leanness or richness of a medium was also a factor in campaign communication method selection. Campaign methods that allowed for a great deal of “space” (or bandwidth) for candidates to explain their candidacy to voters were often prized by candidates. Despite the popularity of direct mail, John Henry, a California trial court judge standing for retention, criticized the media’s inherent leanness: “In something in like a judicial campaign, it's difficult to explain to people why they should care in a mailer. I think that it's easier to do it in an e-mail than it is in a mailer just by virtue of being - the space that you have available to you, but when you are given an opportunity to speak to people for 10, 15, 20 minutes - I think that allows you to do an even better job of explaining than you could in some sort of a written form.”

Others, such as Frank Supercinski, felt the Internet provided the space necessary to explain the candidate’s candidacy. “Everything I did,” Supercinski explained, “I directed them to that Internet site because I felt that Internet site, they could get educated. With radio ads and newspaper ads and things like that, you aren't going to find out anything about that race.”

Though electronic communications were cited as having the capability for candidates to wage an adequate campaign, the reality of limited effectiveness was realized by many. Chris Cobey, who expressed his admiration for and support of the League of Women Voters’ “SmartVoter” project, simultaneously expressed the lack of

actual reach websites had: “Not that many people went [to SmartVoter] for their voting information. As a matter of fact, when I last checked the website - and I think they had a counter on how many people had viewed the videos of the candidates - it was like 300 (laughs), which out of an election of three quarters of a million ain't gonna [sic] do a whole lot for you. As we like to say, you can get the informed vote, but you actually need 50% of the vote (laughs).”

The influence of perceived experts. Judicial candidates rely on the expertise of others in crafting their campaign strategy. Paul Kennedy explained his choice of using direct mail in his campaign for New Mexico Supreme Court: “Direct mail's been pretty much universally recommended to me by all of the political wisepeople [sic] as being the effective way to do things in a low profile race.”

Candidates also took advice from successful local politicians and other elected officials. John Henry explained how he chose his campaign methods: “The way that we kind of figured [what methods to use] was by talking to people and to some other local politicians that were willing to talk to us or were receptive to our message and trying to figure out where they have had success in that message not only in judicial elections but in other down ballot elections and trying to figure out where there places were where we could reach people that would be likely to vote in the election.”

Scholarly research was also cited as a source of campaign guidance. Chris Cobey noted referring to research to determine his campaign methods: “If I had it to do over again maybe I'd look longer at e-mail … I think I even did a little online research for professional literature in political science on the effect of e-mail as a voter motivation tool, but I think in the end it came down to cost. I essentially wasn't going to pay for it.”

Cobey focused a great deal of effort on his ballot designation, citing political science literature as evidence of the ballot designation's influence in elections: "I know I read in the past from … the political science literature that the voter cue in California of the ballot designation is extremely important."

Voter expectations. Put simply: sometimes candidates just "have to" engage in certain campaign communication methods. James Rowe, a candidate for West Virginia's Supreme Court, explained: "I was just in the primary and so [the political parties] provided forums at times … You'd have the Democratic Women of Monroe County hosting a candidate forum and so you'd drive half a day to get to a little courthouse where maybe 30 people showed up at best and you'd talk about your campaign. It's one of those deals where the adage was that you probably don't accomplish a whole lot by showing up but if you don't show up, then people will get mad and they'll say, 'Why so-and-so didn't bother to come to our county so to hell with him.'"

Summary. Direct campaign communication methods (e.g., yard signs, addressing a community group, attending news events/public forums, campaign literature/brochures distribution, etc.) were the most popular in terms of use amongst candidates. The most resource-intensive campaign communication methods (e.g., paid TV/radio/outdoor advertising, direct mail, personal/campaign staff canvassing) were considered the most effective at disseminating campaign messages. However, candidates faced a difficult task in determining how effective their campaign communications are without some form of feedback (e.g., comments on Facebook pages, website visits, and other quantifiable feedback measures). Campaign budgets ultimately determined the campaign methods candidates employ. Candidates were resourceful and balanced the cost of communication

methods against the amount of likely voters they could reach with those methods. Candidates also took into consideration the richness or leanness of campaign methods. Some methods are not appropriate (e.g., billboards) for lengthy, complex campaign messages. Candidates also chose methods based on the evidence of their success (as measured by other successful politicians, consultants, or political scientists) or the voters' expectations (e.g., attending a public forum in smaller communities).

Developing Campaign Messages

The candidate's own personal experience, friends and family, observation of other candidates, voters, regulations, and consultants influence how candidates develop campaign messages.

Personal experience. Although the skillset required for running a campaign is largely unrelated to the duties of serving as an effective judge, this is not to say that judicial candidates come into their own campaigns clueless. Candidates frequently discussed how their political background extends well before the date they filed papers announcing their candidacy. "I've been involved in politics virtually all of my adult life," said Oregon appellate court candidate, James Egan. "Even during my Marine Corps career I would write to candidates, contact candidates, and participate as much as I could from a distance. So, I'm pretty adept at the political form and I kind of knew what I was getting into. Specifically, I knew that I was getting into a judicial campaign and that they were traditionally staid, underreported, and difficult because people don't care that much (laughs)."

A similar story emerged from California trial court candidate Chris Cobey: "My dad was in the state legislature for 12 years in California, so I grew up sort of immersed

in politics and I was actually a page in the House of Representatives when I was in high school." Robert Schaffer also described having waded in the political pool long before announcing his candidacy for a Texas trial court judgeship: "I have been interested in politics since I was in college. I worked in political campaigns many years ago and had a feel for what I wanted to do."

Friends and family. Although judicial campaigns have been marked with a greater degree of professionalization than campaigns in the past (Arbour & McKenzie, 2010), for many – including those running for higher level judicial offices, campaigning is a family affair. For Kentucky Supreme Court candidate Janet Stumbo, family members proved to provide the most campaign help: "Except for the lady that did the e-mail blast for us, everything else was done basically in house. My husband's always run my campaigns. My daughter did our websites and Facebook and all of that kind of communications. We hired film crews but we wrote our own script."

Observation of other candidates. In developing campaign messages, judicial candidates turned to other candidates (their opposition and candidates for other offices) for both a source of inspiration and to identify meaningful contrasts.

Borrowing from other campaigns. Candidates observe and import campaign ideas from other candidates in other races. Said one Florida trial court candidate, "[My wife] and I sat down on the Internet for several nights and went through all of - you know, there are a myriad number of places you can go to get ideas for campaign signs and so we plagiarized some and stole some ideas and came up with a few ideas of our own."

Differentiating from other campaigns. Judicial candidates also take note of their opponents and attempt to create contrasting campaign materials. Trial court candidate,

Steve Burk, described how he developed some of his campaign communications: “I looked at what my opponents had done, in terms of - like their, their billboards and yard signs and whatnot - and decided that there was just way too much information on 'em and so, my signs - and I was quite, quite pleased with what my wife and I came up with - my signs featured my name in very large letters on the top of the sign and then the word ‘Judge’ below my name in very bold letters and between the two, it was, you know, you have to insert the word ‘for,’ but that was in rather small letters.”

Voters. The perceived expectations from voters also factored into how candidates steered their campaigns. Candidates, such as Texas Appellate court candidate Penny Phillips, put themselves in the shoes of the voters to help understand how to effectively reach them: “I just analyzed why someone might want to vote for me instead of that person and that was my message. So my message was: ‘If you think 16 years is enough or if you think it's time for a change,’ you know, that sort of thing,” said Phillips.

Candidates focus their messages on what they believe will be relevant to likely voters. James Rowe described how he crafted his campaign messages while keeping the electorate in mind: “I talked about how important it was to have courts that addressed societal needs and that sort of thing and - but that was not a result of, you know, any polling or any focus groups. That's, you know - we just thought that would resonate with the voters.” John Henry, a California trial court candidate, also keyed in on issues he felt the voters would identify as important: “We noticed kind of a theme of [the incumbent judge] doing what he wanted to on the bench as opposed to doing what we thought the law required. Then it was just a matter of finding the most egregious cases of it or the

cases that people would care most about and typically those are going to be famous like three strike cases or child molestation cases."

Candidates for judicial office try to be keenly aware of their electorate's demographics, which in turn influences their campaign messaging. As North Carolina trial court candidate, Susan Burch, noted, "Well, one of the things that you pay attention to are demographics of the area that you're running in and I run county-wide and so I have paid attention to sort of what the demographics and the voting makeup is of the county that I have and different parts of our county have concentrated voters of different party. For example, some of our outer county area - not as developed - those tend to be more conservative Republican voters. A lot of the city - bigger urban areas that are more densely populated - those tend to vote Democratic."

For judicial candidates in non-partisan elections, the political makeup of the electorate can still play a key role in how they develop their campaign messages. Trial court candidate Courtney McAllister explained how the political demographics of her electorate drove her campaign focus: "The substance of the messages I chose are primarily driven by who I am and then tailored to identify with the electorate. Where I am in northern California, it's a pretty rural area that is more conservative than most of California and so there's a large percentage of the electorate here that identifies with the conservative message. I'm certainly a conservative person, so my message was about the rule of law, consistency, predictability, being conservative, and judicial philosophy, not being a judicial activist and being a kind of law-and-order type person."

Others attempted to design campaign messages with a more populist appeal, such as Florida trial court candidate Karen Miller. In the course of her campaign, the local

media highlighted the candidate's recent DUI, which she in turn attempted to counter. "I spun it as 'Yeah, I'm everyman. I'm the kind of person that should be a judge. I'm not perfect. I admit I'm not perfect. You know, that would make me better because I am a real person with real life experience. I'm not sitting up on some pedestal. I'm a real person and that makes me a better candidate.'"

Regulations. Judicial candidates' campaign messages are also shaped by the Code of Judicial Conduct. For some, the regulatory power of the Code essentially dictates their campaign message. When asked how he developed his campaign communications, Allen Miller, a Washington trial court candidate, explained, "Well that was relatively easy because of the code of judicial conduct." Robert Schaffer, a Texas trial court candidate, echoed this sentiment: "I can't choose a message … I can't say I'm in favor of tort reform and I will impose it every chance I get. I can't say I'm in favor of the death penalty and I will impose it every chance I get."

Candidates also attribute the general lack of excitement in judicial campaigns to the restrictive nature of the Code of Judicial Conduct. As New Mexico trial court candidate Darren Kugler noted, "You focus on primarily a message about your experience, your qualifications, your personality - so it's very innocuous once you're campaigning on trying to sell yourself cause you're prohibited from getting into any specific issues."

The shakeup in judicial candidate speech regulations has left some candidates without a clear understanding of what is legal campaign speech. One Ohio trial court candidate demonstrated this point by describing how the canons of judicial conduct factored into his campaign messages: "We can put out fact-based, fact-based things and

Table 5.19. "Did you hire at least one paid professional for your campaign?"

	Yes		No		Un-specified	
	n	**%**	***n***	**%**	***n***	**%**
Election type						
Retention	13	18	57	80	1	1
Partisan	45	46	52	54	--	--
Non-Partisan	96	48	104	52	1	1
Unspecified	11	11	20	19	72	70
Office sought						
Supreme Court	12	71	5	29	--	--
Appellate Court	23	50	22	48	1	2
Trial Court	118	40	178	60	--	--
Other	6	29	15	71	--	--
Unspecified	6	7	13	14	73	79
Incumbent						
Incumbent	39	37	66	62	1	1
Non-Incumbent	102	54	88	46	--	--
Unspecified	24	14	79	45	73	41
Elected						
Won	78	38	123	61	2	1
Lost	82	47	94	53	--	--
Unspecified	5	5	16	17	72	77
Total	165	35	233	49	74	16

also endorsements and those kind of things but we're not allowed to make kind of like opinion statements."

Campaign professionalization. Results pertaining to the professionalization of judicial campaigns are summarized in Table 5.19. Judges standing for retention were far less prone to hire paid professionals – only 13 (18%) of those standing for retention reporting hired a paid professional, whereas nearly half of candidates in partisan races (*n* = 45, 46%) and non-partisan races (*n* = 96, 48%) reporting having done so. Supreme Court candidates (*n* = 12, 71%) and appellate court candidates (*n* = 23, 50%) were more inclined to hire professionals compared to trial court candidates (*n* = 118, 40%). Non-

incumbents, perhaps due to their inexperience with running judicial campaigns, more frequently relied on professionals (*n* = 102, 54%) than incumbents (*n* = 39, 37%). Those defeated in the election also reported higher numbers in this area (*n* = 82, 47%) than those who were victorious (*n* = 78, 38%), though victorious uncontested candidates likely saw no need to actively campaign.

The types campaign activities for which candidates relied on paid professionals or salaried staff to execute are analyzed in Table 5.20. Overall, candidates relied on paid staff or professionals for three primary campaign activities: media advertising (*n* = 101, 61%), direct mail (*n* = 82, 50%), and campaign management (*n* = 82, 50%).

For most candidates, consultants act as a sounding board for campaign ideas or are hired to "make things happen" and "get things done." This is the result of two key factors: the inability for judicial candidates to locate suitable consultants who (a) have experience in or with judicial elections and (b) have specific knowledge of the electorate they face. Alabama trial court candidate Glenn Thompson explained the role of the consultant he hired: "I really felt like I knew more about Morgan County than [my consultant] did and he agreed and I used him primarily as an advisor – 'What do you think about this?' 'Look at this - tell me what you think.' A lot of the stuff I wrote. The letter from my eight friends - I wrote myself - ran it by him." David Towler, a Texas Appellate court candidate, described a similar arrangement: "I had a campaign manager and I would talk to him about the message but he wasn't a lawyer or a judge and … we bounced [ideas] off of each other, but ultimately it was my decision what the message was and I did what I thought would play well for me."

Table 5.20. "Did you rely on mostly salaried staff or paid consultants for any of the following campaign activities?"

	Campaign manage-ment		Media adver-tising		Press relations		Issue or opposition research		Polling	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	7	54	8	62	6	46	2	15	2	15
Partisan	25	56	27	60	13	29	3	7	13	29
Non-Partisan	45	47	60	63	27	28	9	9	15	16
Unspecified	5	45	6	55	3	27	--	--	1	9
Office sought										
Supreme Court	8	67	9	75	7	58	4	33	7	58
Appellate Court	12	52	16	70	9	39	1	4	5	22
Trial Court	54	46	69	58	31	26	9	8	18	15
Other	5	83	5	83	2	33	--	--	1	17
Unspecified	3	50	2	33	--	--	--	--	--	--
Incumbent										
Incumbent	17	44	26	67	9	23	4	10	9	23
Non-Incumbent	54	53	62	61	32	31	7	7	20	20
Unspecified	11	46	13	54	8	33	3	13	2	8
Elected										
Won	45	58	49	63	19	24	5	6	17	22
Lost	35	43	51	62	29	35	9	11	14	17
Unspecified	2	40	1	20	1	20	--	--	--	--
Total	82	50	101	61	49	30	14	8	31	19

Consultants also help bridge knowledge gaps, as those interested in judicial office are often unfamiliar with the mechanics of running a campaign. Michigan Supreme Court candidate Bridget McCormack demonstrates this succinctly: "I listened to advice from people who knew more than I did." Going further, Mark Shriver, a Georgia trial court candidate, described how consultants helped in areas with which he had little experience: "It was helpful to have assistance of the consultant for more of the details of

Table 5.20. "Did you rely on mostly salaried staff or paid consultants for any of the following campaign activities?" (cont.)

	Fund-raising		Direct mail		Mass telephone calling		Get-out-the-vote activities		Legal advice	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	--	--	6	46	1	8	2	15	2	15
Partisan	15	33	26	58	13	29	10	22	3	7
Non-Partisan	22	23	45	47	19	20	7	7	7	7
Unspecified	3	27	5	45	1	9	2	18	--	--
Office sought										
Supreme Court	6	50	3	25	4	33	2	17	3	25
Appellate Court	9	39	10	43	4	17	1	4	--	--
Trial Court	24	20	61	52	23	19	17	14	8	7
Other	--	--	5	83	2	33	1	17	1	17
Unspecified	1	17	3	50	1	17	--	--	--	--
Incumbent										
Incumbent	9	23	20	51	8	21	4	10	2	5
Non-Incumbent	29	28	52	51	23	23	14	14	8	8
Unspecified	2	8	10	42	3	13	3	13	2	8
Elected										
Won	19	24	43	55	12	15	11	14	6	8
Lost	20	24	38	46	21	26	9	11	6	7
Unspecified	1	20	1	20	1	20	1	20	--	--
Total	40	24	82	50	34	21	21	13	12	7

how you do it and how many people you have to contact in order to try to raise as much money as you can and like - for instance, the first time I met with him, he said, you need to come up with a list of 300 people that you could ask for money from." In essence, consultants act as hired experience, as J. Christopher Erny, a Louisiana Appellate court candidate found. "[The consultants] opened some doors that I wouldn't have been able to open," Erny explained, "I had limited resources so they helped

Table 5.20. "Did you rely on mostly salaried staff or paid consultants for any of the following campaign activities?" (cont.)

	Accounting		Did not rely on salaried staff or paid consultants for these activities		Total
	n	%	n	%	n
Election type					
Retention	4	31	2	15	13
Partisan	5	11	4	9	45
Non-Partisan	24	25	15	16	96
Unspecified	3	27	--	--	11
Office sought					
Supreme Court	6	50	1	8	12
Appellate Court	6	26	1	4	23
Trial Court	21	18	19	16	118
Other	1	17	--	--	6
Unspecified	2	33	--	--	6
Incumbent					
Incumbent	2	5	4	10	39
Non-Incumbent	27	26	15	15	102
Unspecified	7	29	2	8	24
Elected					
Won	13	17	10	13	78
Lost	21	26	11	13	82
Unspecified	2	40	--	--	5
Total	36	22	21	13	165

maximize the dollar value for exposure and things. They've done this enough to where they knew the tricks of the trade."

Table 5.21.1. "To what extent did your campaign communications focus on the following:" (Experience and Qualifications).

	None at all		A little		Some		A great deal		Un-specified	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	15	21	3	4	2	3	37	52	14	20
Partisan	--	--	3	3	6	6	87	90	1	1
Non-Partisan	10	5	4	2	15	7	168	84	4	2
Unspecified	5	5	--	--	3	3	17	17	78	76
Office sought										
Supreme Court	1	6	--	--	2	12	14	82	--	--
Appellate Court	4	9	2	4	3	7	32	70	5	11
Trial Court	21	7	7	2	18	6	236	80	14	5
Other	1	5	1	5	1	5	17	81	1	5
Unspecified	3	3	--	--	2	2	10	11	77	84
Incumbent										
Incumbent	9	8	2	2	7	7	84	79	4	4
Non-Incumbent	1	1	5	3	14	7	169	89	1	1
Unspecified	20	11	3	2	5	3	56	32	92	52
Elected										
Won	22	11	6	3	10	5	147	72	18	9
Lost	5	3	4	2	14	8	151	86	2	1
Unspecified	3	3	--	--	2	2	11	12	77	83
Total	30	6	10	2	26	6	309	65	97	21

Issue positions. Tables 5.21.1-5.21.4 compile the results regarding the focus of campaign messages. A majority of candidates emphasized experience and qualifications (*n* = 309, 65%) "a great deal" in their campaign communications. Character and ethics were also stressed "a great deal" by half of all candidates (*n* = 232, 49%). Issue positions were clearly less emphasized by candidates as 42% (*n* = 197) did not stress such content

Table 5.21.2. "To what extent did your campaign communications focus on the following:" (Character and Ethics).

	None at all		A little		Some		A great deal		Un-specified	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	21	30	5	7	11	15	19	27	15	21
Partisan	4	4	5	5	22	23	65	67	1	1
Non-Partisan	16	8	8	4	35	17	137	68	5	2
Unspecified	7	7	3	3	4	4	11	11	78	76
Office sought										
Supreme Court	1	6	--	--	6	35	10	59	--	
Appellate Court	7	15	4	9	10	22	20	43	5	11
Trial Court	35	12	16	5	51	17	178	60	16	5
Other	2	10	--	--	2	10	16	76	1	5
Unspecified	3	3	1	1	3	3	8	9	77	84
Incumbent										
Incumbent	14	13	7	7	21	20	59	56	5	5
Non-Incumbent	6	3	6	3	35	18	142	75	1	1
Unspecified	28	16	8	5	16	9	31	18	93	53
Elected										
Won	32	16	12	6	36	18	103	51	20	10
Lost	12	7	8	5	33	19	121	69	2	1
Unspecified	4	4	1	1	3	3	8	9	77	83
Total	48	10	21	4	72	15	232	49	99	21

in their campaign at all. Less than one out of ten candidates (*n* = 43, 9%) reported having emphasized issue positions "a great deal" in their communications.

Two types of candidates emerged as being substantially different when it comes to these types of campaign communications: judges standing for retention and appellate court candidates, both of whom appear to campaign far less than other judicial candidates.

Table 5.21.3. "To what extent did your campaign communications focus on the following:" (Issue Positions).

	None at all		A little		Some		A great deal		Un-specified	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	39	55	5	7	4	6	6	8	17	24
Partisan	44	45	16	16	16	16	14	14	7	7
Non-Partisan	99	49	40	20	31	15	20	10	11	5
Unspecified	15	15	4	4	2	2	3	3	79	77
Office sought										
Supreme Court	5	29	4	24	3	18	4	24	1	6
Appellate Court	28	61	4	9	5	11	2	4	7	15
Trial Court	147	50	50	17	40	14	34	11	25	8
Other	7	33	4	19	5	24	2	10	3	14
Unspecified	10	11	3	3	--	--	1	1	78	85
Incumbent										
Incumbent	62	58	13	12	13	12	8	8	10	9
Non-Incumbent	80	42	40	21	35	18	27	14	8	4
Unspecified	55	31	12	7	5	3	8	5	96	55
Elected										
Won	111	55	25	12	23	11	16	8	28	14
Lost	75	43	37	21	30	17	26	15	8	5
Unspecified	11	12	3	3	--	--	1	1	78	84
Total	197	42	65	14	53	11	43	9	114	24

Although one might expect vast differences in campaign focal points between partisan and non-partisan candidates, the data show few significant differences. Across level of judicial office, state supreme court candidates engaged in discussing issue positions far more than both appellate and trial court candidates. Nearly one out of four (*n* = 4, 24%) supreme court candidates reported "a great deal" of focus on issue positions. Such emphasis was less popular with appellate court candidates and trial court candidates (*n* = 2, 4%; *n* = 34, 11% respectively reported "a great deal" of focus on issue positions).

Table 5.21.4. "To what extent did your campaign communications focus on the following:" (Scales).

	Experience and qualifications			Character and ethics			Issue positions		
	n	M	SD	n	M	SD	n	M	SD
Election type									
Retention	57	3.07	1.33	56	2.50	1.31	54	1.57	1.04
Partisan	96	3.88	0.42	96	3.54	0.78	90	2.00	1.14
Non-Partisan	197	3.73	0.74	196	3.49	0.91	190	1.85	1.04
Unspecified	25	3.28	1.21	25	2.76	1.30	24	1.71	1.08
Office sought									
Supreme Court	17	3.71	0.77	17	3.47	0.80	16	2.38	1.20
Appellate Court	41	3.54	0.98	41	3.05	1.14	39	1.51	0.91
Trial Court	282	3.66	0.85	280	3.33	1.04	271	1.86	1.08
Other	20	3.70	0.80	20	3.60	0.94	18	2.11	1.08
Unspecified	15	3.27	1.22	15	3.07	1.22	14	1.43	0.85
Incumbent									
Incumbent	102	3.63	0.90	101	3.24	1.08	96	1.66	1.00
Non-Incumbent	189	3.86	0.46	189	3.66	0.69	182	2.05	1.11
Unspecified	84	3.15	1.28	83	2.60	1.30	80	1.58	0.99
Elected									
Won	185	3.52	1.02	183	3.15	1.15	175	1.68	1.02
Lost	174	3.79	0.62	174	3.51	0.87	168	2.04	1.12
Unspecified	16	3.31	1.20	16	2.94	1.29	15	1.40	0.83
Total	375	3.64	0.88	373	3.31	1.05	358	1.84	1.08

Non-incumbents were also more engaged in this discussion than incumbents (*n* = 27, 14%; *n* = 8, 8% respectively reported "a great deal" of focus on issue positions). Treating these items as a scale, both supreme court candidates and non-incumbents are the top two highest mean scores (*M* = 2.38, *SD* = 1.20; *M* = 2.05, *SD* = 1.11) out of every category of candidate.

Examining the actual issues discussed provides a fuller view of the judicial campaigns waged in 2012. Table 5.22 shows the results of the survey question, "Which

Table 5.22. "Which issue positions did you discuss in your campaign communications?"*

	Court admin-istration		Crime and sentencing		Civil liberties		Abortion		Tort reform	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	12	80	9	60	5	33	--	--	--	--
Partisan	40	87	21	46	9	20	2	4	5	11
Non-Partisan	73	80	54	59	18	20	6	7	7	8
Unspecified	5	56	4	44	3	33	--	--	--	--
Office sought										
Supreme Court	9	82	5	45	4	36	--	--	1	9
Appellate Court	7	64	2	18	2	18	--	--	1	9
Trial Court	102	82	75	60	26	21	6	5	10	8
Other	9	82	5	45	1	9	2	18	--	--
Unspecified	3	75	1	25	2	50	--	--	--	--
Incumbent										
Incumbent	27	79	20	59	5	15	--	--	2	6
Non-Incumbent	85	83	54	53	22	22	7	7	10	10
Unspecified	18	72	14	56	8	32	1	4	--	--
Elected										
Won	48	75	37	58	11	17	2	3	3	5
Lost	80	86	49	53	21	23	6	6	9	10
Unspecified	2	50	2	50	3	75	--	--	--	--
Total	130	81	88	55	35	22	8	5	12	7

* Only candidates who reported that their campaign communications focused on issue positions "a little," "some," or "a great deal" (n = 161) were given this survey item.

issue positions did you discuss in your campaign communications?" In an effort to minimize survey fatigue, this question was only asked if candidates reported spending "a little," "some," or "a great deal" of focus on issue positions in their campaigns. Percentages reported here take into account the total number of candidates who received this survey item (n = 161). The three most popular issue positions discussed by

Table 5.22. "Which issue positions did you discuss in your campaign communications?"* (cont.)

	Consumer protection		Same-sex marriage		Other		Total
	n	%	n	%	n	%	n
Election type							
Retention	--	--	--	--	2	13	15
Partisan	2	4	--	--	15	33	46
Non-Partisan	9	10	3	3	43	47	91
Unspecified	1	11	--	--	3	33	9
Office sought							
Supreme Court	--	--	--	--	4	36	11
Appellate Court	1	9	--	--	5	45	11
Trial Court	9	7	3	2	48	39	124
Other	1	9	--	--	4	36	11
Unspecified	1	25	--	--	2	50	4
Incumbent							
Incumbent	1	3	1	3	16	47	34
Non-Incumbent	10	10	2	2	43	42	102
Unspecified	1	4	--	--	4	16	25
Elected							
Won	5	8	1	2	27	42	64
Lost	6	6	2	2	34	37	93
Unspecified	1	25	--	--	2	50	4
Total	12	7	3	2	63	39	161

* Only candidates who reported that their campaign communications focused on issue positions "a little," "some," or "a great deal" (n = 161) were given this survey item.

candidates included court administration (*n* = 130, 81%), crime and sentencing (*n* = 88, 55%), and "other" (*n* = 63, 39%). Participants reported a variety of "other" issues, such as: court access, capital punishment, issues related to specialty courts (drug courts, juvenile courts, probate courts, etc.), gun rights, and several others that could be explored in future analyses.

"Hot button" issues rarely made their way into judicial campaigns – at least according to candidates. Few reported discussing abortion (*n* = 8, 5%) and even fewer touched on the subject of same-sex marriage (*n* = 3, 2%). As the data show, the majority of candidates who opt to discuss issue positions overwhelmingly report discussing appropriately relevant issues (i.e., court administration, sentencing, and other issues directly related to the judiciary). That said, it is important to reiterate that issue positions are not a central focus of most judicial campaigns.

Why avoid discussing issue positions? Beyond citing the Code of Judicial Conduct, judicial candidates discussed a number of rationales behind their avoidance of including issue positions in their campaigns.

Undesirable characteristic. Aside from the real or perceived legal consequences of engaging in controversial campaign speech, normative beliefs also inform judicial candidates' attitudes when it comes to discussing personal politics. For Glenn Thompson, an Alabama trial court candidate, touting personal positions is akin to ruling without the facts: "As I say often: no matter how thin you slice a biscuit, there's always another side to it. And until you actually are put in a position to have to make a decision, you don't need to be telling folks how you're going to decide something cause there's always some issue that you didn't think about."

Others noted that judges should be open minded when approaching cases: "You don't want a judge coming in with a lot of preconceived notions about what they would do when there's a certain set of facts," said Texas Appellate Court candidate Lawrence Praeger, "You just want to know: Do they understand the law, do they understand the role of the judiciary, do they understand the mechanics of procedure."

In a similar fashion, candidates may lack the information necessary to make declarative statements concerning their personal political viewpoints. “Most judges - they don't have the wide background,” explained Wisconsin trial court candidate, Chris Lipscomb. “Some have never dealt with the kind of cases they're dealing with when they become a judge. So you almost need to have the lawyers who are representing the parties to tell you [the facts] because they have no background. So I wouldn't want some judge thinking he knows the answer before he started anything.”

Not relevant to the duties of the office. Personal issue positions are viewed as irrelevant to the duties of a judge. As one trial court candidate observed, “As a judge, your client is the law … [Y]ou don't just enforce the laws or apply the laws that you think are wise. You apply them all.” Susan Burch, a North Carolina trial court candidate, similarly separated the role of personal politics within the role of judge: “I would not be comfortable going out and saying, ‘I'm a conservative judge,’ or, ‘I'm a liberal judge.’ I think my job is to administer the law ... You're not a conservative or a liberal. You're doing this particular job.”

Bridget McCormack echoed a related reasoning: “The big difference between a candidate for judicial office and a candidate for the state house is that you're not actually an advocate for any particular position or group and if you can't understand and accept that, I think you're not the best man for the job. So, in some ways, your positions or views shouldn't be nearly as relevant as they are for other races.”

Although these sentiments may seem like high minded idealism, Kentucky Supreme Court candidate Janet Stumbo cited specific administrative limitations that further bolster this perspective: “Frankly my personal opinions have very little to do with

my legal opinions (laughs). I mean - I can believe one way but I'm bound by the law and must obey the opinions of the higher courts and so that gives me very little to work with there. I have great respect for the way the law is set up and I'm going to follow precedent."

Hinders ability to perform judicial duties. Candidates recognized that discussing personal politics has potential ramifications for how they perform in office. Ann Crawford McClure explained, "Just because we can [discuss issues positions] doesn't mean we should. So I don't take positions on issues that may come before me. Judges that do are going to be subject to tremendous scrutiny and a motion to recuse for having already expressed their opinions."

The fear of recusal looms in the minds of many candidates, who frequently err on the side of caution when discussing political issues. Michigan Supreme Court candidate, Bridget McCormack, noted the difficulty in responding to issues questionnaires: "There were times when we had to figure out whether we could answer the questions that were asked or not … the main reason [I avoid bringing up issues] is to prevent myself from being recused in any important cases that came before the court in the event that I won."

Avoiding issue position discussion. Candidates typically avoided discussing issue positions by citing the Code of Judicial Conduct and through boiler plate responses (e.g., "It is inappropriate for me to say."). Beyond these simple responses, candidates also opted to respond to inquiries from the public and press by speaking in general terms or through the use of proxies.

***Broad generalities*.** Rather than being specific about personal policy preferences, candidates may choose to retreat to broader generalities. Elizabeth Best described this communicative strategy: "Sometimes people would ask me what I felt about the right to

life and I would go back to my core of: the constitution protects life, liberty and the pursuit of happiness, for example. But I was not going to engage on the specific issue because I didn't think that was appropriate."

Chris Cobey, a California trial court candidate, also described using this strategy, though he understood its inability to win over or even placate inquisitive voters:

> "Somebody wrote me about animal rights (laughs): How do you feel about animal rights? … The only thing you can say is, 'I will enforce the law as I understand the law.' And to a lay person, that's a non-answer, so it's very frustrating in that response."

Proxies. Candidates can signal their personal beliefs to voters through association rather than through explicit declarations. As Washington trial court candidate, Karen Klein, explained, "If somebody asks me, I can tell what groups I belong to. So if they were clearly in my opinion very supporting of marriage equality, I would tell them that I'm a member of the Northwest LGBT Elder Network … Now if they were people like perceived as not supporting that, I wouldn't tell them that piece of information."

Negative campaigning. Topics candidates found to be "appropriate" or "inappropriate" to publicly raise about an opponent are summarized in Table 5.23. Candidates were more prone to find subjects involving legal infractions appropriate and personal or moral matters far less so, suggesting candidates themselves are not personally supportive of personal attacks or mudslinging. For example, marital infidelity was found largely inappropriate to bring up (n = 285, 60%), however a documented case of sexual harassment was deemed much more appropriate (n = 266, 56%). Few found bringing up an opponent's religious beliefs appropriate (n = 17, 4%), just as few found bringing up

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?"

	Using marijuana as a youth						Using cocaine as a youth					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	48	68	8	11	15	21	39	55	17	24	15	21
Partisan	87	90	6	6	4	4	73	75	19	20	5	5
Non-Partisan	165	82	24	12	12	6	144	72	44	22	13	6
Unspecified	16	16	3	3	84	82	13	13	6	6	84	82
Office sought												
Supreme Court	17	100	--	--	--	--	14	82	3	18	--	--
Appellate Court	34	74	3	7	9	20	27	59	10	22	9	20
Trial Court	243	82	34	11	19	6	212	72	63	21	21	7
Other	15	71	2	10	4	19	12	57	5	24	4	19
Unspecified	7	8	2	2	83	90	4	4	5	5	83	90
Incumbent												
Incumbent	91	86	10	9	5	5	78	74	23	22	5	5
Non-Incumbent	158	83	21	11	11	6	137	72	40	21	13	7
Unspecified	67	38	10	6	99	56	54	31	23	13	99	56
Elected												
Won	163	80	17	8	23	11	143	70	37	18	23	11
Lost	145	82	22	13	9	5	121	69	44	25	11	6
Unspecified	8	9	2	2	83	89	5	5	5	5	83	89
Total	316	67	41	9	115	24	269	57	86	18	117	25

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	Failure to pay taxes (tax evasion, tax fraud)						Failure to pay child support					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	2	3	54	76	15	21	7	10	49	69	15	21
Partisan	13	13	81	84	3	3	19	20	76	78	2	2
Non-Partisan	23	11	168	84	10	5	32	16	158	79	11	5
Unspecified	4	4	15	15	84	82	5	5	14	14	84	82
Office sought												
Supreme Court	3	18	14	82	--	--	4	24	13	76	--	--
Appellate Court	3	7	36	78	7	15	8	17	30	65	8	17
Trial Court	30	10	248	84	18	6	44	15	235	79	17	6
Other	4	19	13	62	4	19	4	19	13	62	4	19
Unspecified	2	2	7	8	83	90	3	3	6	7	83	90
Incumbent												
Incumbent	9	8	93	88	4	4	13	12	89	84	4	4
Non-Incumbent	25	13	156	82	9	5	35	18	146	77	9	5
Unspecified	8	5	69	39	99	56	15	9	62	35	99	56
Elected												
Won	23	11	159	78	21	10	36	18	146	72	21	10
Lost	17	10	151	86	8	5	25	14	143	81	8	5
Unspecified	2	2	8	9	83	89	2	2	8	9	83	89
Total	42	9	318	67	112	24	63	13	297	63	112	24

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	A documented allegation of marital infidelity						A documented allegation of sexual harassment					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	42	59	14	20	15	21	10	14	46	65	15	21
Partisan	79	81	15	15	3	3	29	30	65	67	3	3
Non-Partisan	150	75	39	19	12	6	50	25	141	70	10	5
Unspecified	14	14	5	5	84	82	5	5	14	14	84	82
Office sought												
Supreme Court	16	94	1	6	--	--	6	35	11	65	--	--
Appellate Court	32	70	6	13	8	17	12	26	26	57	8	17
Trial Court	214	72	63	21	19	6	69	23	210	71	17	6
Other	15	71	2	10	4	19	5	24	12	57	4	19
Unspecified	8	9	1	1	83	90	2	2	7	8	83	90
Incumbent												
Incumbent	81	76	20	19	5	5	24	23	77	73	5	5
Non-Incumbent	145	76	35	18	10	5	51	27	131	69	8	4
Unspecified	59	34	18	10	99	56	19	11	58	33	99	56
Elected												
Won	149	73	33	16	21	10	52	26	130	64	21	10
Lost	127	72	39	22	10	6	40	23	128	73	8	5
Unspecified	9	10	1	1	83	89	2	2	8	9	83	89
Total	285	60	73	15	114	24	94	20	266	56	112	24

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	A bribery conviction						A recent bankruptcy					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention			56	79	15	21	24	34	32	45	15	21
Partisan	8	8	87	90	2	2	46	47	47	48	4	4
Non-Partisan	13	6	179	89	9	4	86	43	105	52	10	5
Unspecified	2	2	17	17	84	82	9	9	10	10	84	82
Office sought												
Supreme Court	2	12	15	88	--	--	6	35	11	65	--	--
Appellate Court	2	4	37	80	7	15	16	35	22	48	8	17
Trial Court	14	5	266	90	16	5	131	44	148	50	17	6
Other	4	19	13	62	4	19	9	43	7	33	5	24
Unspecified	1	1	8	9	83	90	3	3	6	7	83	90
Incumbent												
Incumbent	6	6	97	92	3	3	39	37	62	58	5	5
Non-Incumbent	14	7	168	88	8	4	89	47	92	48	9	5
Unspecified	3	2	74	42	99	56	37	21	40	23	99	56
Elected												
Won	17	8	167	82	19	9	88	43	93	46	22	11
Lost	5	3	163	93	8	5	74	42	94	53	8	5
Unspecified	1	1	9	10	83	89	3	3	7	8	83	89
Total	23	5	339	72	110	23	165	35	194	41	113	24

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	Using campaign funds for personal use						An opponent's questionable military record					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	3	4	53	75	15	21	19	27	36	51	16	23
Partisan	9	9	86	89	2	2	42	43	49	51	6	6
Non-Partisan	17	8	175	87	9	4	80	40	107	53	14	7
Unspecified	3	3	16	16	84	82	7	7	12	12	84	82
Office sought												
Supreme Court	2	12	15	88	--	--	8	47	9	53	--	--
Appellate Court	3	7	36	78	7	15	12	26	26	57	8	17
Trial Court	22	7	258	87	16	5	113	38	158	53	25	8
Other	3	14	14	67	4	19	10	48	7	33	4	19
Unspecified	2	2	7	8	83	90	5	5	4	4	83	90
Incumbent												
Incumbent	9	8	94	89	3	3	42	40	57	54	7	7
Non-Incumbent	16	8	166	87	8	4	79	42	98	52	13	7
Unspecified	7	4	70	40	99	56	27	15	49	28	100	57
Elected												
Won	20	10	164	81	19	9	86	42	91	45	26	13
Lost	10	6	158	90	8	5	60	34	105	60	11	6
Unspecified	2	2	8	9	83	89	2	2	8	9	83	89
Total	32	7	330	70	110	23	148	31	204	43	120	25

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	An opponent's religious beliefs						A DUI or DWI (drunk driving) conviction					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	53	75	2	3	16	23	8	11	48	68	15	21
Partisan	91	94	4	4	2	2	29	30	62	64	6	6
Non-Partisan	181	90	11	5	9	4	43	21	145	72	13	6
Unspecified	19	18	--	--	84	82	7	7	12	12	84	82
Office sought												
Supreme Court	17	100	--	--	--	--	6	35	11	65	--	--
Appellate Court	38	83	1	2	7	15	8	17	30	65	8	17
Trial Court	264	89	15	5	17	6	66	22	208	70	22	7
Other	16	76	1	5	4	19	4	19	12	57	5	24
Unspecified	9	10	--	--	83	90	3	3	6	7	83	90
Incumbent												
Incumbent	100	94	3	3	3	3	22	21	79	75	5	5
Non-Incumbent	170	89	12	6	8	4	48	25	128	67	14	7
Unspecified	74	42	2	1	100	57	17	10	60	34	99	56
Elected												
Won	176	87	7	3	20	10	52	26	128	63	23	11
Lost	158	90	10	6	8	5	32	18	132	75	12	7
Unspecified	10	11	--	--	83	89	3	3	7	8	83	89
Total	344	73	17	4	111	24	87	18	267	57	118	25

Table 5.23. "Regardless of the impact on campaign strategy and a candidate's chance of winning, do you think that publicly raising the following subjects about a political opponent is appropriate or inappropriate?" (cont.)

	An illegal immigrant employed in an opponent's home						An opponent's sexual orientation					
	Inappro-priate		Appro-priate		Un-Specified		Inappro-priate		Appro-priate		Un-Specified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	21	30	35	49	15	21	52	73	3	4	16	23
Partisan	56	58	35	36	6	6	91	94	4	4	2	2
Non-Partisan	94	47	89	44	18	9	183	91	9	4	9	4
Unspecified	10	10	9	9	84	82	19	18	--	--	84	82
Office sought												
Supreme Court	13	76	4	24	--	--	17	100	--	--	--	--
Appellate Court	19	41	17	37	10	22	38	83	1	2	7	15
Trial Court	137	46	134	45	25	8	265	90	14	5	17	6
Other	9	43	7	33	5	24	16	76	1	5	4	19
Unspecified	3	3	6	7	83	90	9	10	--	--	83	90
Incumbent												
Incumbent	55	52	44	42	7	7	100	94	3	3	3	3
Non-Incumbent	94	49	79	42	17	9	172	91	10	5	8	4
Unspecified	32	18	45	26	99	56	73	41	3	2	100	57
Elected												
Won	93	46	83	41	27	13	176	87	7	3	20	10
Lost	83	47	80	45	13	7	159	90	9	5	8	5
Unspecified	5	5	5	5	83	89	10	11	--	--	83	89
Total	181	38	168	36	123	26	345	73	16	3	111	24

an opponent's sexual orientation appropriate (*n* = 16, 3%). However, failure to pay taxes (tax evasion, tax fraud), failure to pay child support, a bribery conviction, using campaign funds for personal use, and a DUI or DWI (drunk driving) conviction were all deemed appropriate subjects to raise against a political opponent by more than half of those surveyed. Some legal infractions were not deemed so appropriate. Both "using marijuana as a youth" and "using a cocaine as a youth" were found largely inappropriate subjects to bring up against an opponent (*n* = 316, 67%; *n* = 269, 57% respectively). Candidates favor subjects about their opponent that are recent and timely and have some legal implication.

There were three subjects where candidates appeared divided: a recent bankruptcy, an opponent's questionable military record, and an illegal immigrant employed in an opponent's home. The division is likely a result of not enough context to determine the appropriateness of such subjects. A bankruptcy in and of itself is not necessarily a sign of poor character and in a tough economy, harping on an opponent's bankruptcy may be perceived as "kicking someone while they're down." An opponent's questionable military record may be worth discussing, but without the context, candidates were divided. A "questionable military record" could refer to a candidate having a poor attendance record or perhaps to something far more serious. Also lacking enough context for a definitive ruling, "an illegal immigrant employed in an opponent's home" could be worth mentioning, but without knowing whether the opponent was aware or not may have inhibited candidates from finding this legal infraction "appropriate" subject matter for their campaign.

Looking at the findings across election types, few differences are found. A fair amount (20%+) of judges standing for retention failed to respond to these items, making comparisons difficult. Likewise, few differences were found across incumbency status or electoral outcome.

Analyzing the data across office sought reveals some stark differences for both supreme and trial court candidates. First, supreme court candidates are unlikely to find many of these subjects appropriate campaign fodder. Second, some issues are more likely to be appropriate in trial court contests. Trial court candidates were more approving of raising subjects related to sexual morality, including marital infidelity (deemed appropriate by $n = 63$, 21%) and sexual harassment (deemed appropriate by $n = 210$, 71%) than were supreme court candidates ($n = 1$, 6%; $n = 11$, 65% respectively reported such subjects as "appropriate").

Summary. Beyond campaign regulations, candidates cite a number of sources that influenced their campaign message development. The candidate's own personal experience (e.g., previous campaigns), friends and family, other candidates for office, voters, and campaign consultants all played roles in how candidates crafted their communications.

Issue positions were rarely a significant feature of candidates' campaigns. Those that did discuss issue positions largely kept the discussion limited to issues relevant to the judicial office (e.g., court administration issues, crime and sentencing issues, etc.). Few candidates chose to campaign on hot button issues (e.g., abortion, same-sex marriage). The majority of candidates focus on traditional campaign messages focused on their experience and qualifications, as well as their character and ethics. Candidates chose to

avoid discussing issue positions because they see such outspokenness as being an undesirable characteristic for a judge or they believe personal positions are not relevant to the judicial office they sought. As some candidates noted in follow-up interviews, being outspoken could result in having to recuse oneself from a greater number of cases, thereby hindering their ability to serve in the position they sought. Candidates avoid discussing their own personal positions by speaking in broad generalities or through identifying associations with particular positions (e.g., being a member of the National Rifle Association would indicate strong beliefs about the Second Amendment and gun ownership).

Candidates are generally against negative campaigning, though they have more favorable attitudes toward bringing up an opponent's legal infractions.

Consequences of Campaigning

Rewarding aspects of campaigning. Although scholars have focused a great deal of effort criticizing judicial elections, judicial candidates relayed a number of positive outcomes associated with this selection method. Candidates frequently discussed how their campaigns helped connect them to the greater community (and vice versa), aided in educating the public, and fulfilled democratic ideals. Candidates also noted a number of personal rewards as a result of running for judicial office.

Community support. Elections provide an outlet for community support through interaction between and among the candidates and the public. "For all the demands associated with campaigning, the ability to meet people during the process provides the greatest reward to a candidate, regardless of the outcome," explained Kevin Flanagan. "I know of no other time except during the campaign process where a complete stranger can

walk up onto a porch, extend a hand and introduce oneself." Even larger scale judicial elections have the potential to achieve such ideal outcomes. Though critical of elections for a number of reasons, James Rowe, a West Virginia Supreme Court candidate, noted the power of elections to bring people together: "You become closer … with people in their community as well as their communities and you know what's going on and you know what their issues are and what is important and what's not important. And it does force you to reconnect with the community and from that standpoint that's a very good thing."

Education. One of the rewards candidates identified was the educational aspect of campaigns, which is critical as the public is generally uninformed when it comes to the judiciary. "The public is basically generally divorced from the legal system" explained Texas appellate court candidate, Frank Supercinski, "Unless they get involved in it personally and then they get real concerned, you know." Judicial campaigns allow a space and time for candidates to remind the people the purpose of the judicial system and how it functions. Tod Daniel, a trial court candidate from Wisconsin, discussed how campaigns remain one of the few places for educating the public about the functions of the judiciary: "The opportunity to talk about the system and stuff is fun. I mean, we used to do a lot more stuff in schools - like May Day we'd be in classrooms, you know, that kind of stuff. Bar doesn't do any of that anymore."

Given the lack of public knowledge of the courts, it is no surprise that candidates spent a great deal of effort educating the public about the office they sought. Darren Kugler, a New Mexico trial court candidate, discussed how voter education was the central aspect of his campaign:

> "I ended up spending as much of my time talking about what the position is in district court. The general public outside the Bar and law enforcement community doesn't even understand when you say 'district court' as to which court - I learned to identify it by its street location ... So, a lot of it is educational process with the public - informing them as to … which court it is, what kind of matters are heard there, and why it is important to them."

Aside from educating the electorate, campaigns also require candidates to educate themselves. "It's very scary," one candidate said, "because frankly I didn't even know what my district was when I first filed. There were a couple of counties in there I had never been to before (laughs)." Elections also encourage candidates (typically practicing lawyers) to reexamine their core understanding of the legal system. "You get back to your basic fundamental constitutional understanding," Texas appellate court candidate Lawrence Praeger explained, "Why are jury trials important? What's the constitution about? Individual liberties - what does that mean? Have you ever represented someone against the power of government?"

Fulfilling democratic ideals. For many candidates, running for office fulfills democratic ideals. Aside from providing voters a choice in potential officials, competitive elections result in other beneficial outcomes, according to Mindy Barry, a Michigan Supreme Court candidate: "I believe that the more candidates there are, the better off the electorate is - not just because they have more options, but also because I think the competition between the candidates forces topics to be discussed that may not otherwise be discussed." Competitive elections, Chris Lipscomb, explained, forces candidates to

"prove themselves" by requiring candidates to "put [their] qualifications and time and effort into [the campaign]."

Although critics of elections cite the unwanted influence of public opinion in the judicial process as one of the downsides to judicial elections, to some, such as Ohio trial court candidate Dean W. Van Dress, such an outcome is beneficial to democracy if one views the judicial office as being in line with legislative and executive offices. "I think that when you run against incumbents," Van Dress explained, "You keep current incumbents in check a little bit. I think that they think about the next race a little bit more. They know that somebody out there who will run against them and it tempers them a little bit while they're in office to perhaps, you know, double check and rethink and make sure they're doing everything right or [inaudible] that they can do or perhaps to do better service for their constituents."

Personal rewards. Campaigning for judicial office simultaneously promotes self-reflection and self-validation on the part of the candidates. David Towler, a Texas appellate court candidate, found himself proud of his ability to push himself outside of his comfort zone: "I didn't run away - I didn't just go to Democratic functions. I went to mixed functions. I even went to some Republican functions. Not scared to talk to the opposition - talk to people who viewed me skeptically from the get go and I found it rewarding to be able to talk to them." Campaigning, according to Karen Klein, a Washington trial court candidate, also encourages self-reflection. "You have to talk all the time and you have to give sound bites but you also have to really look at yourself," Klein revealed, "It really reinforced who I am and what I want out of life and that I want to make a difference."

Running for office provides a platform for public attention, which can often benefit the careers of candidates. “The best advertising campaign I ever ran was the year I took off as the democratic nominee for the fourth court of appeals (laughs),” noted one candidate. “You talk about business coming in, shwew man. People just flock to you. It gives you an amount of credibility that nothing else you can do will ever come close to. So it was good for business. I'll say that.” Aside from the potential for increased legal business, lawyers running against incumbents may benefit in the courtroom due to recusal rules. “Here's the even best part,” one Florida court candidate explained, “I never have to appear in front of [my opponent] or her husband ever again, which is huge for my clients cause they're horrible judges. They have to recuse themselves from all of my cases.”

Troubling aspects of campaigning. Candidates identified several troubling aspects of running for office, including concerns over campaign speech, greater structural issues with judicial elections in general, campaign financing concerns, and concerns over the role external groups take in judicial elections.

Campaign speech concerns. Campaign speech concerns revolved around two primary aspects of campaigning: negative campaigning and candidate speech regulations.

Negative campaigning. Tables 5.24.1 and 5.24.2 show the survey data regarding candidates’ views on the tone of the election. Overall, results lean toward to the positive end of the scale (M = 3.33, SD = 1.15), indicating that most candidates found the campaign tone to be neutral to mostly positive.

Further examination of the data with regard to election type reveals retention candidates were more neutral on this item (M = 3.17, SD = 1.02) compared to partisan

Table 5.24.1. "Was the tone of the electoral contest you were involved in:"

(Percentages).

	Over-whelmingly negative		Mostly negative		Neither positive nor negative		Mostly positive		Over-whelmingly positive		Unspecified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	3	4	11	15	32	45	3	4	11	15	32	45
Partisan	3	3	21	22	27	28	3	3	21	22	27	28
Non-Partisan	11	5	41	20	52	26	11	5	41	20	52	26
Unspecified	1	1	5	5	5	5	1	1	5	5	5	5
Office sought												
Supreme Court	3	18	6	35	4	24	3	18	6	35	4	24
Appellate Court	--	--	6	13	17	37	--	--	6	13	17	37
Trial Court	14	5	60	20	90	30	14	5	60	20	90	30
Other	1	5	4	19	4	19	1	5	4	19	4	19
Unspecified	--	--	2	2	1	1	--	--	2	2	1	1
Incumbent												
Incumbent	5	5	20	19	34	32	5	5	20	19	34	32
Non-Incumbent	9	5	42	22	45	24	9	5	42	22	45	24
Unspecified	4	2	16	9	37	21	4	2	16	9	37	21
Elected												
Won	7	3	37	18	63	31	7	3	37	18	63	31
Lost	11	6	40	23	49	28	11	6	40	23	49	28
Unspecified	--	--	1	1	4	4	--	--	1	1	4	4
Total	18	4	78	17	116	25	18	4	78	17	116	25

Table 5.24.2. "Was the tone of the electoral contest you were involved in:" (Scale).*

	Scale*		
	n	**M**	**SD**
Election type			
Retention	65	3.17	1.02
Partisan	95	3.37	1.12
Non-Partisan	198	3.37	1.19
Unspecified	18	3.22	1.26
Office sought			
Supreme Court	16	2.63	1.36
Appellate Court	44	3.50	0.93
Trial Court	287	3.32	1.15
Other	20	3.50	1.24
Unspecified	9	3.78	1.20
Incumbent			
Incumbent	102	3.35	1.17
Non-Incumbent	189	3.37	1.17
Unspecified	85	3.21	1.08
Elected			
Won	194	3.42	1.15
Lost	172	3.21	1.15
Unspecified	10	3.70	1.06
Total	376	3.33	1.15

* Excludes cases that had missing values for survey item (n = 20).

(*M* = 3.37, *SD* = 1.12) and non-partisan (*M* = 3.37, *SD* = 3.37) candidates. Candidates for state supreme court by and large viewed their electoral contests negatively (*M* = 2.63, *SD* = 1.36) – far more so than appellate (*M* = 3.50, *SD* = 0.93) and trial (*M* = 3.32, *SD* = 1.15) court candidates. The responses of incumbents and non-incumbents were essentially identical (*M* = 3.35, *SD* = 1.17 and *M* = 3.37, *SD* = 1.17 respectively). Defeated candidates were slightly more negative than election winners

Table 5.25. "During the campaign did any group or individual misrepresent your experience, qualifications, character and ethics, or issue positions?"

	Yes		No		Unspecified	
	n	**%**	***n***	**%**	***n***	**%**
Election type						
Retention	23	32	45	63	3	4
Partisan	38	39	59	61	--	--
Non-Partisan	90	45	109	54	2	1
Unspecified	9	9	11	11	83	81
Office sought						
Supreme Court	10	59	7	41	--	--
Appellate Court	11	24	34	74	1	2
Trial Court	129	44	163	55	4	1
Other	9	43	12	57	--	--
Unspecified	1	1	8	9	83	90
Incumbent						
Incumbent	34	32	71	67	1	1
Non-Incumbent	95	50	94	49	1	1
Unspecified	31	18	59	34	86	49
Elected						
Won	64	32	136	67	3	1
Lost	95	54	79	45	2	1
Unspecified	1	1	9	10	83	89
Total	160	34	224	47	88	19

(M = 3.21, SD = 1.15 compared to M = 3.42, SD = 1.15), though both leaned toward the positive end of the scale.

Similar in scope, Table 5.25 breaks down the data regarding whether candidates reported being misrepresented during the course of their campaigns. Overall, more than a third of candidates (n = 160, 34%) felt that some group or individual had misrepresented their experience, qualifications, character and ethics, or issue positions at some point during the election.

Interestingly, non-partisan candidates reported with greater frequency being misrepresented during the campaign (n = 90, 45%) than partisan candidates

(*n* = 23, 32%) or judges standing for retention (*n* = 23, 32%). Across judicial office, supreme court candidates stood out as the majority (*n* = 10, 59%) reported being misrepresented. A larger proportion of non-incumbents (*n* = 34, 32%) and defeated candidates (*n* = 95, 54%) reported being misrepresented compared to incumbents (*n* = 34, 32%) and election winners (*n* = 64, 32%).

Candidates, as Table 5.26 shows, are evenly divided when it comes to responding to such misrepresentations with 80 (50%) reporting having responded to the misrepresentations and 80 (50%) indicating that they did not respond. Across each of the variables analyzed, data appear to suggest one singular trend: about half of candidates respond and about half do not.

Those who faced negative campaigning were taken by surprise. “What was disappointing to me was,” Mindy Barry explained, “There was a lot more dirty fighting than I had anticipated. The personal, unethical attack - it was hard on my family. Putting them through the mudslinging [was] directly hurtful to them.”

Aside from finding such campaigning distasteful, candidates note their inability to launch effective counter campaigns. Elizabeth Best, a candidate for Montana’s Supreme Court explained why she did not choose to respond to an interest group’s round of negative ads that specifically targeted her:

Table 5.26. "Did you respond to the misrepresentation(s)?"*

	Yes		No		Total
	n	%	n	%	n
Election type					
Retention	10	43	13	57	23
Partisan	19	50	19	50	38
Non-Partisan	45	50	45	50	90
Unspecified	6	67	3	33	9
Office sought					
Supreme Court	5	50	5	50	10
Appellate Court	6	55	5	45	11
Trial Court	64	50	65	50	129
Other	4	44	5	56	9
Unspecified	1	100	--	--	1
Incumbent					
Incumbent	18	53	16	47	34
Non-Incumbent	49	52	46	48	95
Unspecified	13	42	18	58	31
Elected					
Won	29	45	35	55	64
Lost	50	53	45	47	95
Unspecified	1	100	--	--	1
Total	80	50	80	50	160

* Only participants who reported being misrepresented (n = 160) were given this survey item.

> "I didn't have time. Once I found out, we were two weeks away from the primary and there wasn't anything really that could be done. All of the media was bought. There wasn't any more and that's another factor - there wasn't any more media to buy because, again, of all this upticket campaigning … The media was bought early and all sorts of candidates had bought it and there just wasn't any more room."

Judges standing for retention are particularly at a disadvantage as several states prohibit campaign activity unless the candidate faces opposition. One judge standing for

retention described one possible scenario: “[If] all of a sudden there was active opposition about a week or two before the election - that candidate probably would not be able to effectively mount a campaign to challenge the opposition.” The candidate would be unable to mount a counter-campaign as the candidate would first have to observe opposition and submit forms to the state prior to attempt to raise funds. Resource-laden, national interest groups need only wait until the final stretch of the election to launch an opposition campaign in order to ensure the absence of an effective counter-campaign.

Launching a counter-campaign may not be productive, as some candidates noted. For one state supreme court candidate, fighting back was simply not an appropriate response: “I got a lot of criticism because I didn't fight back but I don't think that's appropriate … I demonstrated that they were incorrect and that they were misrepresenting what I said but I didn't try to do anything like that my opponent because I don't think that's appropriate. That's not what a judicial race should be.”

For another candidate, fighting back would have meant starting a war: “I debated whether to respond to that and I just kind of went back on the past experience that that kind of thing doesn't ever help (laughs) you know, it just seems to feed the flame of negativity and so I just let it be.”

Candidates found that going negative simply did not play to their best strength or interest. “I was very careful to stay away from criticizing [my opponent] because I don't think criticism has much place in a judicial race and I just don't think it serves me well,” explained one candidate. “Some people can do it and get away with it, some people can't. I felt like if I got ugly, if I got critical, that I would do myself more harm than I would good, so, I didn't.”

Going further, candidates also recognized that voters do not respond well to negative campaigning in judicial elections. Darren Kugler, a trial court candidate in New Mexico, noted that he and his opponents were aware of the consequences of going negative: “I think all of us realized there's a futility to going negative. That it was more likely to turn off voters than it was to actually help you prevail.” This perspective was also shared by Wisconsin trial court candidate Chris Lipscomb, who observed, “I do think most people though want a fair election … particularly for judges more than anybody else … They don't like the mudslinging.”

Candidate speech regulations. Candidates also took issue with speech regulations that limit their ability to connect with the electorate. On one hand, restrictions appear to be more of annoyance for candidates such as Florida trial court candidate, Stephen Burk. “Really the only thing that you're allowed to say is ‘In making a decision, I will follow and apply the law.’ What the hell does that tell you?” He continued, “[W]hile I understand and agree with the restrictions against doing that because that might tend to make people want to pander to various groups or individuals or whatever - I agree with it from that standpoint but it's also very frustrating in that you don't really have the opportunity to let people know what sort of a person they're voting for.”

On the other hand, restrictions may in fact be the driving factor behind the disconnect between the judiciary and the public. James Egan, an Oregon appellate court candidate, explained: “The canons of judicial conduct, to a certain extent, cause the candidates to [appear] aloof. You can't talk about a specific case, you can't talk about specific issues you might be called upon to decide and therefore, these candidates sound like they're just in an ivory tower.”

Some restrictions, as one candidate pointed out, may have outlived their utility in an age where vast amounts of personal information available online. “Some of the stuff is really stupid,” said one candidate, “like we’re not allowed to say our party affiliation, which I'm sure in the old days was a maybe an okay idea, but I'm sure that anybody can Google me and find out what my party affiliation is.”

Electoral concerns. Candidates discussed three general structural concerns with judicial elections: overcrowded ballots, sizeable electorates, and the arbitrariness of elections.

Overcrowded ballots make it difficult for candidates to effectively reach voters. “Our ballots are long and we're at the bottom,” explained Susan Burch, a North Caroline trial court candidate. “The only race usually that's beyond ours is the soil and water conservation supervisor and so, you know a lot of folks, after they get through the first 7 or 8 pages are like, ‘How long is this thing?’ They don't know anything about the judges and they just simply stop voting and so it can be very confusing … [Y]ou might have to deal with 15 or 16 different elections on that ballot of judges that are running.”

Aside from overcrowded ballots, judicial candidates running in densely populated counties or serving large districts (or the state as a whole) likewise face an uphill battle when it comes to connecting with the electorate. In many cases, candidates face larger electorates than those serving as state representatives or senators. “A number of years ago,” John Baker, an Indiana appellate court judge began, “I was approached by one of our Democrats in the House of Representatives and he said ‘Well, you know, there's some discussion about putting you guys back on the ballot - partisan.’ And I said, ‘Now you think about that for a minute, representative. How many counties do you run in, sir?’

And he said, ‘Well I run in four.’ And I said, ‘Well I run in 53’ … That was the end of the discussion for that session.”

By and large, candidates took issue with the arbitrariness of elections. Concerns within this category included the arbitrariness of the election outcome and the candidates’ political party designation. The outcome of judicial elections, according to one judicial candidate, is akin to a “crap shoot” dependent on “things like the weather.” Ohio appellate court candidate, Clair Dickinson, summed up this frustration succinctly: “What you have to do to get the job has absolutely nothing to do whatsoever with how you'll perform the job.”

A great example demonstrative of Dickinson’s claim is the “name game” involved in judicial elections, specifically low-information non-partisan contests. In such circumstances, the candidate’s name is one of the most important assets (or liabilities) to a candidate. One aspect of this concern involves the order of candidate’s names, as Georgia trial court candidate Mark Shriver explained:

> “Candidates on the ballot are listed alphabetically and my opponent's last name begins with a 'C.' My last name begins with an 'S.' So his name is top of mine on the ballot and somebody told me at the very beginning of the campaign that that would - that I faced an uphill battle just because of that. And I believe that came to be true.”

Aside from ballot order, names also impart information to voters concerning the candidate’s likely gender and ethnicity. “In my county, if you have an Irish or an Italian name, you get elected. It's just that simple, which is kind of ironic, because I'm Italian but I don't have an Italian sounding name,” one candidate said. “[My opponent] used her

former spouses' politically great name to get elected … Other people have actually changed their name … because it was a great ballot name. I swear, it's insane. At the end of the day, every single candidate that had an Irish or Italian surname won."

Perceived ethnicity based on the candidate's name can also lead candidates to alter their name to make it more palatable to the electorate. Karen Miller described one candidate, Miguel Fernandez, who changed his approach in his third judicial campaign:

> "This is a real white, middle-class redneck area and they don't like his name. The last election, he's now introducing himself as 'Mike Fernandez' like he would sit next to me … and he would say - and I know him real well - and he would say, 'Well my name appears on the ballot as Miguel Fernandez - but, but all my friends call me Mike.' Okay dude, none of your friends have ever called you 'Mike,' okay, ever. And he was beaten by somebody named Joseph Foster who was a virtual unknown … 70% of the vote Joe got … and that's just because [Miguel Fernandez] has an ethnic name."

Aside from making minor alterations to their name, candidates also engage in the name game by picking better political last names upon marriage. "Sweeney in Cuyhoga County is gold," explained another candidate, "and [a male candidate] married a Sweeney and changed his name to his wife's name."

Partisan designations were also the source of much concern. As some candidates discovered, party labels can be more powerful than any campaign message. Stephen Burk, who ran for trial court judge in Florida, believed his past experience battling against the state in the courtroom would resonate with the libertarian-minded Tea Party crowd. Indeed, as Burk noted, "these Tea Party folks just really ate that up … As a matter of fact,

they kind of swamped my wife after we spoke [at their meeting].” However, as the campaigns progressed and voters learned of the candidates’ party labels, Burk faced a much colder reception when speaking at a second meeting: “I did not feel the love the second time we were invited there ... I had several people come up to me during the campaign and say to me, point blank, ‘I've heard you speak, I love what you have to say, you belong to the wrong party. I would never vote for you.’”

The power of the party label is difficult if not impossible to overcome, as Robert Shaffer noted, “In the end, if I'd had $10 million, I don't think it would have made a difference. So, I felt like we had done everything we could with the resources that we had and that there just wasn't anything that was going to change the outcome.” Partisanship also discourages candidates from attempting to engage the electorate. David Towler faced this scenario in his campaign for Texas appellate court:

> “I was going to be driving through town, taking my son off to college, and I was told by the party chair, ‘Don't bother even slowing down. We got about 300 Democrats in this county. You're going to get all their votes. There's nothing else you can do here. I don't have time for you.’ (sighs)”

Candidates were surprised by such occurrences given the general sentiment that personal political ideology has little to do with the functions of a judge. “In the broad scheme of things, there isn't Republican justice or Democratic justice,” Ann Crawford McClure argued, “We're supposed to follow the law and apply the law to the facts of the case.” Susan Burch further added her concern over information gleaned from party labels: “I'm not sure that party affiliation really tells a voter anything about how that

person will do as a judge. It doesn't really give insight into their qualifications or skill level to be able to do the work that you're voting on them to do."

This sentiment was particularly true for trial court candidates, who by in and large do not issue rulings related to policy. As one trial court candidate explained, "At our level of work, your political ideology is so immaterial. You're calling the balls and strikes … Even if you're trying to inject it into things, you wouldn't find many opportunities to do it because we're not dealing with policy matters, we're dealing with individual cases."

Financing concerns. Campaign finance is a great concern in the "new-style" judicial campaign era. Raising campaign funds proved important for candidates. Nearly half of those surveyed (n = 228, 48%) reported establishing a committee to solicit campaign contributions.

Table 5.27 further shows stark differences across the variables of interest. Less than one third of judges standing for retention (n = 21, 30%) established a committee, which is unsurprising given that many of these judges are specifically prohibited from actively campaigning. Partisan and non-partisan candidates were similar in their adoption of committees (n = 62, 64% and n = 129, 64% respectively). Although most candidates for state supreme court (n = 12, 71%) and trial courts (n = 179, 60%) established committees, appellate court candidates lagged behind both by a high degree (n = 20, 43%). Lastly, candidates defeated in the election (n = 118, 67%) were more likely to establish committees compared to their counterparts (n = 100, 49%). This difference is likely due to incumbents who did not face active opposition to their election and therefore did not have to actively campaign.

Table 5.27. "Did you establish a committee to solicit campaign contributions?"

	Yes		No		Unspecified	
	n	**%**	***n***	**%**	***n***	**%**
Election type						
Retention	21	30	49	69	1	1
Partisan	62	64	34	35	1	1
Non-Partisan	129	64	66	33	6	3
Unspecified	16	16	14	14	73	71
Office sought						
Supreme Court	12	71	5	29	--	--
Appellate Court	20	43	26	57	--	--
Trial Court	179	60	110	37	7	2
Other	8	38	12	57	1	5
Unspecified	9	10	10	11	73	79
Incumbent						
Incumbent	60	57	44	42	2	2
Non-Incumbent	132	69	53	28	5	3
Unspecified	36	20	66	38	74	42
Elected						
Won	100	49	98	48	5	2
Lost	118	67	55	31	3	2
Unspecified	10	11	10	11	73	78
Total	228	48	163	35	81	17

Table 5.28 shows the sources from which judicial candidates reported receiving campaign contributions. The majority of candidates received campaign contributions from their own pockets (*n* = 321, 68%), lawyers/law firms (*n* = 259, 55%), and other individuals (excluding lawyers) (*n* = 268, 57%). Similar to the findings summarized in Table 5.27, retention candidates, appellate court candidates, incumbents, and election winners lagged behind their counterparts. However, the findings here demonstrate the increased importance of contributions from interest groups. More candidates reported receiving contributions from interest groups (*n* = 101, 21%) than from political parties (*n* = 58, 12%). Further review of the data reveals that even in partisan contests, twice as

Table 5.28. "Which of the following sources contributed campaign funds?"

	You or your immediate family		Lawyers/ Law firms		Other individuals (excluding lawyers)		Political party		Interest groups (including PACs)		Other	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	36	51	21	30	22	31	3	4	9	13	19	27
Partisan	81	84	75	77	76	78	18	19	34	35	14	14
Non-Partisan	180	90	147	73	152	76	33	16	53	26	20	10
Unspecified	24	23	16	16	18	17	4	4	5	5	6	6
Office sought												
Supreme Court	14	82	15	88	14	82	6	35	13	76	2	12
Appellate Court	27	59	26	57	24	52	7	15	13	28	9	20
Trial Court	249	84	201	68	209	71	42	14	72	24	40	14
Other	17	81	8	38	13	62	3	14	3	14	2	10
Unspecified	14	15	9	10	8	9	--	--	--	--	6	7
Incumbent												
Incumbent	80	75	69	65	64	60	20	19	30	28	12	11
Non-Incumbent	179	94	151	79	163	86	30	16	59	31	21	11
Unspecified	62	35	39	22	41	23	8	5	12	7	26	15
Elected												
Won	146	72	116	57	117	58	27	13	51	25	37	18
Lost	160	91	132	75	141	80	31	18	48	27	17	10
Unspecified	15	16	11	12	10	11	--	--	2	2	5	5
Total	321	68	259	55	268	57	58	12	101	21	59	13

many judicial candidates report receiving contributions from interest groups (*n* = 34, 35%) than from political parties (*n* = 18, 19%). However, nowhere else do interest groups shine more than in contests for state supreme court where more than three-quarters (*n* = 13, 76%) of candidates report receiving contributions from such groups.

Despite the importance of securing campaign contributions, judicial candidates report fundraising as a minor campaign activity. Overall, most candidates (*n* = 242, 51%) spend between 0-20% of their time on the campaign trail actively seeking campaign donations (see Tables 5.29.1 and 5.29.2 for full analysis), with an overall average of just over 20% (*M* = 21.89, *SD* = 22.97).

Retention candidates by and large do not seek campaign contributions as 65% (*n* = 46) report spending absolutely zero time attempting to raise funds. Partisan (*M* = 25.47, *SD* = 22.01) and non-partisan candidates (*M* = 24.77, *SD* = 23.16) report a near equivalent amount of time spent fundraising. Compared to candidates for other levels of the judiciary, supreme court candidates are under greater pressure to raise money for their campaigns. The majority of supreme court candidates (*n* = 10, 59%) report spending between 30-50% of their time fundraising, with an overall average of over 40% (*M* = 43.53, *SD* = 26.91) of their time being spent on seeking campaign contributions – far greater than appellate (*M* = 21.82, *SD* = 24.62) or trial court candidates (*M* = 21.40, *SD* = 22.12). Non-incumbents (*M* = 27.91, *SD* = 22.49) and defeated candidates (*M* = 28.71, *SD* =23.78) report spending more time fundraising than their counterparts (*M* = 20.75, *SD* = 22.83 and *M* = 16.67, *SD* = 20.58 respectively).

Table 5.29.1. "Please indicate the percentage of time spent on your campaign that was dedicated to fundraising" (Percentages).

	0%		10%		20%		30%		40%		50%		60%		70%		80%		90%	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Election type																				
Retention	46	65	4	6	3	4	4	6	2	3	2	3	--	--	2	3	1	1	--	--
Partisan	16	16	23	24	17	18	12	12	6	6	11	11	4	4	4	4	--	--	2	2
Non-Partisan	52	26	32	16	27	13	29	14	17	8	17	8	7	3	11	5	2	1	3	1
Unspecified	12	12	9	9	1	1	1	1	2	2	2	2	1	1	1	1	1	1	--	--
Office sought																				
Supreme Court	2	12	--	--	1	6	4	24	3	18	3	18	--	--	1	6	1	6	2	12
Appellate Court	17	37	8	17	2	4	5	11	1	2	5	11	2	4	4	9	--	--	--	--
Trial Court	89	30	53	18	42	14	34	11	20	7	21	7	9	3	13	4	2	1	3	1
Other	8	38	2	10	3	14	2	10	3	14	2	10	--	--	--	--	--	--	--	--
Unspecified	10	11	5	5	--	--	1	1	--	--	1	1	1	1	--	--	1	1	--	--
Incumbent																				
Incumbent	39	37	19	18	10	9	11	10	7	7	7	7	6	6	7	7	--	--	--	--
Non-Incumbent	29	15	35	18	32	17	31	16	16	8	21	11	5	3	8	4	2	1	5	3
Unspecified	58	33	14	8	6	3	4	2	4	2	4	2	1	1	3	2	2	1	--	--
Elected																				
Won	85	42	35	17	17	8	24	12	9	4	12	6	4	2	8	4	1	0	--	--
Lost	31	18	27	15	31	18	22	13	17	10	19	11	7	4	10	6	2	1	5	3
Unspecified	10	11	6	6	--	--	--	--	1	1	1	1	1	1	--	--	1	1	--	--
Total	126	27	68	14	48	10	46	10	27	6	32	7	12	3	18	4	4	1	5	1

Table 5.29.1. “Please indicate the percentage of time spent on your campaign that was dedicated to fundraising.” (cont.)

	Unspecified	
	n	%
Election type		
Retention	7	10
Partisan	2	2
Non-Partisan	4	2
Unspecified	73	71
Office sought		
Supreme Court	--	--
Appellate Court	2	4
Trial Court	10	3
Other	1	5
Unspecified	73	79
Incumbent		
Incumbent	--	--
Non-Incumbent	6	3
Unspecified	80	45
Elected		
Won	8	4
Lost	5	3
Unspecified	73	78
Total	86	18

Table 5.29.2. "Please indicate the percentage of time spent on your campaign that was dedicated to fundraising" (Scale).*

	Scale*		
	n	**M**	**SD**
Election type			
Retention	64	9.69	19.35
Partisan	95	25.47	22.01
Non-Partisan	197	24.77	23.16
Unspecified	30	17.67	23.44
Office sought			
Supreme Court	17	43.53	26.91
Appellate Court	44	21.82	24.62
Trial Court	286	21.4	22.12
Other	20	18	18.52
Unspecified	19	14.21	23.64
Incumbent			
Incumbent	106	20.75	22.83
Non-Incumbent	184	27.61	22.49
Unspecified	96	12.19	20.68
Elected			
Won	195	16.67	20.58
Lost	171	28.71	23.78
Unspecified	20	14.5	23.5
Total	386	21.89	22.97

* Scale results exclude cases that had missing values for survey item (n = 86)

Campaign finance proved to be the primary concern of candidates as they simultaneously recognized the influence money has within the judiciary and the insatiable need for campaign donations.

Judicial candidates are well aware of the inherent "ickiness" of financing judicial campaigns. "One of the most disgusting things about … being an attorney is when people

are running for judge, you get hit up for campaign contributions," Stephen Burk explained, "It's always made me very uncomfortable to write a check to a judge's campaign knowing that someday I might be in front of that judge. It just doesn't smell right to be funding judicial campaigns." Similarly, Lawrence Praeger discussed his experience as a lawyer serving clients who sought to influence the judge through campaign contributions: "I have had clients come into my office and say things to me like, 'Well do you think it'd be better for my case if I gave a contribution to the campaign?'"

Even candidates who recognized judicial campaign financing as a necessary evil have a difficult time accepting the current model. "Everything about the money is disheartening," said one trial court candidate, "There's no getting away from the fact that there's … tension about saying - even if it's through an intermediary – 'Give me money so that I can be in a position to decide your cases' (laughs) … I don't look at it that way … I think a rational way to look at it is that good lawyers want to have good judges do a good job and they benefit from that irrespective of outcomes in particular, specific cases, but still it's awkward."

At the same time, candidates who seek judicial office are in no place to turn away contributors for the sake of high-minded ideals. "[Campaigning is] just an endless cycle of expenses," says Texas appellate court candidate Lawrence Praeger. Despite their desire for a seemingly endless supply of campaign contributions, there is a limited supply of money that the electorate is willing to donate in any given election year. "The difficulty is the fact that you're trying to run a race when there's not enough money to do so," says Clair Dickinson. Judicial candidates compete for campaign donations that could fund legislative or executive office candidates and frequently find themselves attempting

to pull in donations from the same individuals their opponents solicit. “[It’s difficult] when you have five court of appeals judges out there with their hand out to the same contributors for the same money,” David Towler explained.

External Group Involvement. Tables 5.30 and 5.31 breakdown the data concerning candidates’ perceptions of the level of involvement interest groups and political parties had in their electoral contests. As evident in the tables, incumbents (M = 1.50, SD = 0.77) and election winners (M = 1.53, SD = 0.85) reported less involvement from external groups than their counterparts (non-incumbents: M = 1.77, SD = 0.88; defeated candidates: M = 1.81, SD = 0.86). Notably, supreme court candidates reported a high degree of interest group involvement (M = 2.59, SD = 0.87) – much higher than appellate court (M = 1.89, SD = 0.88) or trial court (M = 1.58, SD = 0.81) candidates.

Political parties are more involved with judicial elections than are interest groups, with over half of all candidates (n = 248, 53%) reporting some level of activity by political parties. Unsurprisingly, political parties are more involved with partisan elections (M = 2.56, SD = 0.99) than non-partisan (M = 2.05, SD = 0.98) or retention (M = 1.53, SD = 0.94) elections. Parties appear to also take a more active role in supreme court contests (M = 2.65, SD = 1.17) than appellate court (M = 2.11, SD = 1.09) or trial court (M = 2.06, SD = 1.01) elections. Incumbents and election winners report far lower party activity (M = 1.91, SD = 0.92 and M = 1.85, SD = 1.01 respectively) than do non-incumbents (M = 2.38, SD = 1.02) and defeated candidates (M = 2.38, SD = 0.99).

Table 5.30. "In the election you were involved in, how active were interest groups (including PACs)?"

	Not at all active		Somewhat active		Very active		Extremely active		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	M	SD
Election type												
Retention	46	65	14	20	7	10	3	4	1	1	1.53	0.85
Partisan	47	48	35	36	8	8	7	7	--	--	1.74	0.89
Non-Partisan	107	53	65	32	17	8	11	5	1	1	1.66	0.85
Unspecified	12	12	7	7	--	--	1	1	83	81	1.50	0.76
Office sought												
Supreme Court	1	6	8	47	5	29	3	18	--	--	2.59	0.87
Appellate Court	16	35	22	48	3	7	4	9	1	2	1.89	0.88
Trial Court	173	58	86	29	24	8	12	4	1	0	1.58	0.81
Other	13	62	5	24	--	--	3	14	--	--	1.67	1.06
Unspecified	9	10	--	--	--	--	--	--	83	90	1.00	0.00
Incumbent												
Incumbent	66	62	29	27	6	6	4	4	1	1	1.50	0.77
Non-Incumbent	87	46	73	38	17	9	13	7	--	--	1.77	0.88
Unspecified	59	34	19	11	9	5	5	3	84	48	1.57	0.88
Elected												
Won	130	64	50	25	11	5	12	6	--	--	1.53	0.85
Lost	74	42	69	39	21	12	10	6	2	1	1.81	0.86
Unspecified	8	9	2	2	--	--	--	--	83	89	1.20	0.42
Total	212	45	121	26	32	7	22	5	85	18	1.65	0.86

* Scale results exclude cases that had missing values for survey item (n = 85).

Table 5.31. "In the election you were involved in, how active were political parties?"

	Not at all active		Somewhat active		Very active		Extremely active		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	M	SD
Election type												
Retention	49	69	11	15	4	6	6	8	1	1	1.53	0.94
Partisan	15	15	33	34	29	30	20	21	--	--	2.56	0.99
Non-Partisan	71	35	68	34	41	20	20	10	1	1	2.05	0.98
Unspecified	3	3	11	11	3	3	2	2	84	82	2.21	0.85
Office sought												
Supreme Court	4	24	3	18	5	29	5	29	--	--	2.65	1.17
Appellate Court	17	37	13	28	8	17	7	15	1	2	2.11	1.09
Trial Court	109	37	92	31	61	21	33	11	1	0	2.06	1.01
Other	6	29	8	38	3	14	3	14	1	5	2.15	1.04
Unspecified	2	2	7	8	--	--	--	--	83	90	1.78	0.44
Incumbent												
Incumbent	42	40	37	35	19	18	7	7	1	1	1.91	0.92
Non-Incumbent	43	23	64	34	49	26	33	17	1	1	2.38	1.02
Unspecified	53	30	22	13	9	5	8	5	84	48	1.70	0.97
Elected												
Won	99	49	56	28	27	13	21	10	--	--	1.85	1.01
Lost	37	21	60	34	49	28	27	15	3	2	2.38	0.99
Unspecified	2	2	7	8	1	1	--	--	83	89	1.90	0.57
Total	138	29	123	26	77	16	48	10	86	18	2.09	1.02

* Scale results exclude cases that had missing values for survey item (n = 86).

Candidates held a divided view regarding the involvement of external groups in judicial elections, as Tables 5.32.1, 5.32.2, 5.33.1, and 5.33.2 demonstrate. Overall, findings demonstrate candidates overall hold negative attitudes toward the involvement of political parties (M = 2.41, SD = 1.17) and interest groups (M = 2.34, SD = 1.09) in judicial elections.

All categories of candidates expressed somewhat negative attitudes regarding interest groups involved in judicial campaigns. Retention candidates held more negative views (M = 2.03, SD = 0.99) than did partisan (M = 2.41, SD =1.19) or non-partisan (M = 2.40, SD = 1.07) candidates. Supreme court candidates were less critical (M = 2.75, SD = 0.86) than appellate (M = 2.30, SD = 1.04) or trial (M = 2.31, SD = 1.12) court candidates. Incumbents (M = 2.18, SD = 1.11) were more critical of interest group involvement than were non-incumbents (M = 2.51, SD = 1.11).

Attitudes toward political party involvement differ. Partisan candidates held slightly more favorable views toward political parties (M = 2.96, SD = 1.25) than retention (M = 2.14, SD = 1.01) or non-partisan (M = 2.23, SD = 1.18) candidates. Supreme court candidates (M = 2.63, SD = 1.02) were slightly more receptive to party involvement than trial court candidates (M = 2.34, SD = 1.22). Incumbents (M = 2.40, SD = 1.25) and non-incumbents (M = 2.49, SD = 1.26) were similar, as were election winners (M = 2.51, SD = 1.17) and defeated candidates (M = 2.27, SD = 1.25).

Despite having slightly negative attitudes toward party involvement, candidates praised them for providing logistical support and much-needed resources. For Texas appellate court candidate, Penny Philips, party support was a godsend:

Table 5.32.1. "When it comes to interest groups (including PACs) involved in judicial campaigns, is your attitude toward them:" (Percentages).

	Very negative		Somewhat negative		Neither negative nor positive		Somewhat positive		Very positive		Unspecified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	26	37	13	18	23	32	1	1	1	1	7	10
Partisan	26	27	23	24	28	29	9	9	6	6	5	5
Non-Partisan	54	27	41	20	75	37	23	11	4	2	4	2
Unspecified	4	4	8	8	6	6	2	2	--	--	83	81
Office sought												
Supreme Court	2	12	2	12	10	59	2	12	--	--	1	6
Appellate Court	10	22	16	35	13	28	2	4	2	4	3	7
Trial Court	92	31	61	21	95	32	29	10	9	3	10	3
Other	4	19	3	14	10	48	2	10	--	--	2	10
Unspecified	2	2	3	3	4	4	--	--	--	--	83	90
Incumbent												
Incumbent	36	34	25	24	27	25	9	8	3	3	6	6
Non-Incumbent	43	23	41	22	74	39	22	12	7	4	3	2
Unspecified	31	18	19	11	31	18	4	2	1	1	90	51
Elected												
Won	60	30	45	22	66	33	14	7	6	3	12	6
Lost	47	27	38	22	62	35	20	11	5	3	4	2
Unspecified	3	3	2	2	4	4	1	1	--	--	83	89
Total	110	23	85	18	132	28	35	7	11	2	99	21

Table 5.32.2. "When it comes to interest groups (including PACs) involved in judicial campaigns, is your attitude toward them:" (Scale).*

	Scale*		
	n	**M**	**SD**
Election type			
Retention	64	2.03	0.99
Partisan	92	2.41	1.19
Non-Partisan	197	2.40	1.07
Unspecified	20	2.30	0.92
Office sought			
Supreme Court	16	2.75	0.86
Appellate Court	43	2.30	1.04
Trial Court	286	2.31	1.12
Other	19	2.53	0.96
Unspecified	9	2.22	0.83
Incumbent			
Incumbent	100	2.18	1.11
Non-Incumbent	187	2.51	1.08
Unspecified	86	2.13	1.00
Elected			
Won	191	2.27	1.08
Lost	172	2.41	1.10
Unspecified	10	2.30	1.06
Total	373	2.34	1.09

* Scale results exclude cases that had missing values for survey item (n = 99).

> "The deadline to have your signatures in was Friday at six o'clock PM, so I had to get all those signatures and I could have never done it myself. I think I personally got 10 of them, so the party overwhelmingly got those signatures for me … Without the support of the party, I would never have run. It wouldn't have occurred to me to run and I would not have been able to get the signatures and be on the ballot."

Table 5.33.1. "When it comes to political parties involved in judicial campaigns, is your attitude toward them:" (Percentages).

	Very negative		Somewhat negative		Neither negative nor positive		Somewhat positive		Very positive		Unspecified	
	n	%	n	%	n	%	n	%	n	%	n	%
Election type												
Retention	22	31	16	23	22	31	3	4	1	1	7	10
Partisan	13	13	24	25	24	25	22	23	12	12	2	2
Non-Partisan	74	37	43	21	49	24	25	12	7	3	3	1
Unspecified	4	4	6	6	6	6	4	4	--	--	83	81
Office sought												
Supreme Court	3	18	3	18	7	41	3	18	--	--	1	6
Appellate Court	11	24	9	20	15	33	5	11	3	7	3	7
Trial Court	97	33	67	23	68	23	41	14	15	5	8	3
Other	2	10	8	38	7	33	2	10	2	10	--	--
Unspecified	--	--	2	2	4	4	3	3	--	--	83	90
Incumbent												
Incumbent	34	32	21	20	27	25	15	14	6	6	3	3
Non-Incumbent	54	28	45	24	45	24	31	16	13	7	2	1
Unspecified	25	14	23	13	29	16	8	5	1	1	90	51
Elected												
Won	49	24	44	22	62	31	28	14	10	5	10	5
Lost	64	36	42	24	35	20	23	13	10	6	2	1
Unspecified	--	--	3	3	4	4	3	3	--	--	83	89
Total	113	24	89	19	101	21	54	11	20	4	95	20

Table 5.33.2. "When it comes to political parties involved in judicial campaigns, is your attitude toward them:" (Scale).*

	Scale*		
	n	**M**	**SD**
Election type			
Retention	64	2.14	1.01
Partisan	95	2.96	1.25
Non-Partisan	198	2.23	1.18
Unspecified	20	2.50	1.05
Office sought			
Supreme Court	16	2.63	1.02
Appellate Court	43	2.53	1.20
Trial Court	288	2.34	1.22
Other	21	2.71	1.10
Unspecified	9	3.11	0.78
Incumbent			
Incumbent	103	2.40	1.25
Non-Incumbent	188	2.49	1.26
Unspecified	86	2.27	1.02
Elected			
Won	193	2.51	1.17
Lost	174	2.27	1.25
Unspecified	10	3.00	0.82
Total	377	2.41	1.20

* Scale results exclude cases that had missing values for survey item (n = 95).

Resources afforded by external groups can combat the limited availability of campaign contributions. "When you're running as a partisan part of the ticket," Susan Burch explained, "The party itself is putting out materials and they're there promoting the candidates of that party and so you get the benefit of their expenditures because you're included in their information."

Despite the potential for external groups to help judicial candidates campaign, candidates also note their vulnerability to attacks from resource-laden interest groups. “I was the canary in the coal mine,” Elizabeth Best observed, “I was the first one in this state at least to be targeted by dark money …We felt like we were in a pretty good position but what we didn't know was that more than I had raised and more than my opponents had raised combined was going to be spent in the last two weeks by another entity ... it had never happened before.”

Michigan Supreme Court candidate Bridget Mary McCormack described a similar experience:

> “[Interest groups ran] one big bad TV ad about how bad I am. They bought a million dollars’ worth of TV in one week. If any group spends a million dollars against one of my opponents, I'd feel similarly disgusted by it … In judicial elections, the electorate walks into the ballot and at least in Michigan it's non-partisan - they just see a list of names and so a Swift Boat-type ad, I think, has the potential to do a lot more damage.”

Is it worth it? Given the potential for an arduous campaign deterring would-be candidates from tossing their hats in the ring, it is worth exploring whether candidates felt the experience is truly worth enduring the undesirable consequences of campaigning for public office.

Campaign effectiveness. To examine this aspect of judicial campaigns, it is valuable to first examine whether candidates felt their campaigns reached the electorate. As Table 5.34 shows, the majority of judicial candidates (n = 259, 58%) felt that voters were “slightly” or “somewhat” informed about their qualifications for office. Few

Table 5.34. "All in all, what level of knowledge would you say voters had about your candidacy?"

	Voters were uninformed about my relevant qualifications and/or positions		Voters were only slightly informed about my relevant qualifications and/or positions		Voters were somewhat informed about my relevant qualifications and/or positions		Voters were well-informed about my relevant qualifications and/or positions		Unspecified	
	n	%	n	%	n	%	n	%	n	%
Election type										
Retention	14	20	21	30	22	31	11	15	3	4
Partisan	22	23	33	34	25	26	17	18	--	--
Non-Partisan	30	15	69	34	77	38	22	11	3	1
Unspecified	2	2	7	7	5	5	4	4	85	83
Office sought										
Supreme Court	5	29	7	41	4	24	1	6	--	--
Appellate Court	17	37	18	39	7	15	2	4	2	4
Trial Court	45	15	100	34	109	37	39	13	3	1
Other			4	19	7	33	9	43	1	5
Unspecified	1	1	1	1	2	2	3	3	85	92
Incumbent										
Incumbent	16	15	34	32	40	38	14	13	2	2
Non-Incumbent	34	18	69	36	60	32	26	14	1	1
Unspecified	18	10	27	15	29	16	14	8	88	50
Elected										
Won	21	10	59	29	80	39	39	19	4	2
Lost	46	26	68	39	46	26	14	8	2	1
Unspecified	1	1	3	3	3	3	1	1	85	91
Total	68	14	130	28	129	27	54	11	91	19

candidates felt that voters were "uninformed" about their candidacy (n = 68, 14%), and few (n = 54, 11%) felt that voters were "well-informed."

A higher proportion of candidates in partisan races felt that voters were uninformed (n = 22, 23%) than nonpartisan candidates (n = 30, 15%). This pattern held true for the proportion of candidates reporting that voters were well-informed (partisan candidates: n = 17, 18%; nonpartisan candidates: n = 22, 11%). Over one-third of appellate court candidates (n = 17, 37%) felt voters were completely uninformed about their candidacy – a higher proportion than any other category of candidate included in this analysis. Trial court candidates, on the other hand, held far more positive views – with precisely half (n = 148, 50%) reporting voters were "somewhat" or "well" informed about their candidacy. Minor differences were found across incumbency status and not so surprisingly, those defeated in the election largely felt that voters were uninformed about their candidacy (n = 46, 26%) compared to election winners, who held more positive views regarding the effectiveness of their campaign (n = 39, 19% felt that voters were well informed of their qualifications for office).

Overall experience. Examining whether candidates felt running for office was a positive or a negative experience is another way to assess whether candidates felt running for office was worth it. For most candidates, running for office is a positive experience, as Table 5.35 shows. Treating response options as a scale, results the "average candidate" would place the experience between neither positive nor negative and somewhat positive (M = 3.45, SD=1.29). In fact, across all levels of the variables analyzed here, candidates tended to report positive experiences. Even those who lost the election reported an overall positive experience (M = 3.22, SD = 1.36), though, as we might expect, those who won

Table 5.35. "For you, personally, would you say that the experience of running for public office was:"

	Very negative		Some-what negative		Neither negative nor positive		Some-what positive		Very positive		Un-specified		Scale*	
	n	%	n	%	n	%	n	n	%	n	%	n	M	SD
Election type														
Retention	2	3	11	15	28	39	15	21	13	18	2	3	69	3.38	1.06
Partisan	7	7	27	28	7	7	24	25	31	32	1	1	96	3.47	1.38
Non-Partisan	16	8	49	24	20	10	58	29	56	28	2	1	199	3.45	1.34
Unspecified	--	--	5	5	1	1	8	8	4	4	85	83	18	3.61	1.14
Office sought															
Supreme Court	1	6	6	35	3	18	6	35	1	6	--	--	17	3.00	1.12
Appellate Court	3	7	10	22	9	20	9	20	13	28	2	4	44	3.43	1.32
Trial Court	20	7	71	24	41	14	82	28	79	27	3	1	293	3.44	1.30
Other	1	5	4	19	2	10	6	29	8	38	--	--	21	3.76	1.30
Unspecified	--	--	1	1	1	1	2	2	3	3	85	92	7	4.00	1.15
Incumbent															
Incumbent	6	6	30	28	21	20	25	24	22	21	2	2	104	3.26	1.25
Non-Incumbent	16	8	45	24	5	3	59	31	64	34	1	1	189	3.58	1.38
Unspecified	3	2	17	10	30	17	21	12	18	10	87	49	89	3.38	1.11
Elected															
Won	5	2	37	18	44	22	49	24	65	32	3	1	200	3.66	1.18
Lost	19	11	52	30	11	6	55	31	37	21	2	1	174	3.22	1.36
Unspecified	1	1	3	3	1	1	1	1	2	2	85	91	8	3.00	1.51
Total	25	5	92	19	56	12	105	22	104	22	90	19	382	3.45	1.29

* Scale results exclude cases that had missing values for survey item (n = 90).

reported a slightly better time (M = 3.66, SD = 1.18). That said, the mean for candidates for state supreme court was directly in the middle (M = 3.00, SD = 1.12), the lowest mean scale score out of all types of candidates.

Plans for the future. As a final indicator of whether candidates believe running for office was worth it, Table 5.36 summarizes candidates' responses as to whether they plan to run for public office in the future. Less than one third of candidates (n = 150, 32%) report any level of unlikeliness to run again. Given that even some election winners report some level of unlikeliness to run again in the future (n = 55, 27%), these results should be comforting to those concerned over whether the rough and tumble, new-style campaigns discourage potential candidates from running for office. Overall, more than one quarter of all candidates (n = 129, 27%) report that they "almost certainly" will run for office again in the future. Nearly half of all candidates report that they will likely run again in the future (n = 231, 49% report some level of likelihood ("fairly," "very", or "almost certainly") of running again in the future). Those who lost their elections are consistent with the overall findings, with about half (n = 91, 52%) reporting some level of unlikeliness of running again.

Summary. Candidates noted a number of concerning issues with judicial elections and campaigns. Most found the tone of their contest positive, but nearly one-third of all candidates reported being misrepresented by another individual or group. This is significant as candidates generally do not have the resources (campaign funds, access to paid media) to launch effective counter campaigns, though they cited a number of other reasons why responding to such misrepresentations would be unproductive (e.g., a candidate's response may simply "fan the flames" and "start a war").

Candidates expressed frustration with the regulations that guide their campaign activities. To some, restrictions make candidates "appear aloof" and force their campaign communications to be overly general to be of any use to voters.

Other concerns aligned with the ones discussed in Chapter Three. Candidates discussed overcrowded ballots, the difficult of campaigning when facing a large electorate, and the arbitrariness of judicial elections (e.g., the importance of how their name appears on the ballot, the overriding power of the partisan designation).

Surprisingly, candidates report fundraising as a minor activity, comprising an average of around 20% of their total time spent on their campaign. This may be due to the unique regulations that prohibit candidates from personally asking for campaign contributions. Despite this finding, candidates expressed concerns over the corruptive nature of campaign financing in judicial campaigns.

Political parties were generally more involved in judicial elections than interest groups, who tended to focus their efforts on supreme court races. Overall, candidates held negative attitudes toward both groups' involvement in judicial campaigns, though candidates identified a number of ways political parties aided in their campaigns (e.g., acquiring the required amount of signatures to get on the ballot). Interestingly, state supreme court candidates held less negative views toward interest groups, though follow-up interviews revealed some candidates felt their involvement completely undermined their campaigns.

Despite the view that the public is largely disinterested in judicial elections, most candidates felt that voters were at least slightly to somewhat informed of their

qualifications for office. For most candidates, running for judicial office proved to be a positive experience and few candidates said they would not run again in the future.

Interviews revealed a number of positive outcomes associated with campaigning. Judicial campaigns help strengthen the connection between the candidates and the community and serve as an opportunity for civic education. Elections provide a reason to remind voters of the judiciary and its role in our government. Candidates also note personal rewards as a result of winning – including feelings of self-validation, as well as commercial success (as campaigns can act as advertising for their law practice).

Crafting a Better System

Tables 5.37.1-5.39.6 summarize the responses to the reform proposals described in Chapter Three.

Voluntarist reforms. In general, candidates supported the voluntary reforms assessed in this study (see Tables 5.37.1 and 5.37.2), with stronger support for voluntary campaign agreements concerning campaign speech and conduct (M = 3.74, SD = 1.09) than for public financing (M = 3.31, SD = 1.41).

Voluntary campaign agreements were supported across all levels of the variables included for analysis. Election winners (M = 3.77, SD = 1.05) and defeated candidates (M = 3.71, SD = 1.14) approached the same level of support, as did incumbents supportive (M = 3.62, SD = 1.12) and non-incumbents (M = 3.84, SD = 1.09). Although there were minor differences across election type and office sought, the overall results suggest voluntary campaign agreements have a broad base of support from judicial candidates.

Table 5.36. "Which of the following statements comes closest to your plans for the future?"

	I almost certainly will not run for public office in the future		It is very unlikely that I will run for public office in the future		It is fairly unlikely that I will run for public office in the future		It is fairly likely that I will run for public office in the future		It is very likely that I will run for public office in the future		I almost certainly will run for public office in the future		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Election type														
Retention	8	11	8	11	8	11	10	14	11	15	22	31	4	6
Partisan	6	6	16	16	16	16	14	14	12	12	33	34	--	--
Non-Partisan	30	15	21	10	32	16	26	13	24	12	66	33	2	1
Unspecified	1	1	2	2	2	2	2	2	3	3	8	8	85	83
Office sought														
Supreme Court	--	--	2	12	4	24	6	35	3	18	2	12	--	--
Appellate Court	8	17	8	17	4	9	5	11	4	9	13	28	4	9
Trial Court	34	11	34	11	48	16	41	14	37	13	100	34	2	1
Other	2	10	3	14	2	10	--	--	5	24	9	43		
Unspecified	1	1							1	1	5	5	85	92
Incumbent														
Incumbent	11	10	10	9	21	20	9	8	14	13	41	39		
Non-Incumbent	24	13	26	14	28	15	30	16	24	13	56	29	2	1
Unspecified	10	6	11	6	9	5	13	7	12	7	32	18	89	51
Elected														
Won	16	8	13	6	26	13	15	7	29	14	99	49	5	2
Lost	26	15	33	19	32	18	37	21	20	11	27	15	1	1
Unspecified	3	3	1	1					1	1	3	3	85	91
Total	45	10	47	10	58	12	52	11	50	11	129	27	91	19

Table 5.37.1. Voluntarist Reform: Provide public funding for all ballot-qualified candidates.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	6	8	8	11	22	31	15	21	12	17	8	11	3.30	1.20
Partisan	18	19	13	13	11	11	22	23	30	31	3	3	3.35	1.52
Non-Partisan	37	18	19	9	42	21	51	25	49	24	3	1	3.28	1.42
Unspecified	3	3	--	--	2	2	4	4	4	4	90	87	3.46	1.56
Office sought														
Supreme Court	5	29	1	6	2	12	4	24	5	29	--	--	3.18	1.67
Appellate Court	4	9	4	9	9	20	8	17	17	37	4	9	3.71	1.35
Trial Court	49	17	34	11	62	21	77	26	64	22	10	3	3.26	1.38
Other	5	24	1	5	4	19	3	14	7	33	1	5	3.30	1.63
Unspecified	1	1	--	--	--	--	--	--	2	2	89	97	3.67	2.31
Incumbent														
Incumbent	18	17	10	9	24	23	30	28	24	23	--	--	3.30	1.37
Non-Incumbent	36	19	21	11	30	16	42	22	55	29	6	3	3.32	1.49
Unspecified	10	6	9	5	23	13	20	11	16	9	98	56	3.29	1.28
Elected														
Won	36	18	20	10	47	23	53	26	37	18	10	5	3.18	1.37
Lost	27	15	19	11	30	17	39	22	56	32	5	3	3.46	1.44
Unspecified	1	1	1	1	--	--	--	--	2	2	89	96	3.25	2.06
Total	64	14	40	8	77	16	92	19	95	20	104	22	3.31	1.41

* Scale results exclude cases that had missing values for survey item (n = 104).

Table 5.37.2. Voluntarist Reform: Voluntary campaign agreements concerning campaign speech and conduct.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	--	--	6	8	24	34	15	21	17	24	9	13	3.69	0.98
Partisan	5	5	6	6	24	25	25	26	33	34	4	4	3.81	1.15
Non-Partisan	5	2	18	9	61	30	50	25	62	31	5	2	3.74	1.08
Unspecified	2	2	--	--	4	4	4	4	3	3	90	87	3.46	1.33
Office sought														
Supreme Court	2	12	2	12	2	12	5	29	6	35	--	--	3.65	1.41
Appellate Court	1	2	1	2	16	35	6	13	18	39	4	9	3.93	1.07
Trial Court	9	3	26	9	88	30	79	27	81	27	13	4	3.70	1.08
Other	--	--	1	5	5	24	4	19	9	43	2	10	4.11	0.99
Unspecified	--	--	--	--	2	2	--	--	1	1	89	97	3.67	1.15
Incumbent														
Incumbent	5	5	9	8	36	34	27	25	29	27	--	--	3.62	1.12
Non-Incumbent	5	3	15	8	49	26	47	25	65	34	9	5	3.84	1.09
Unspecified	2	1	6	3	28	16	20	11	21	12	99	56	3.68	1.04
Elected														
Won	4	2	16	8	62	31	50	25	61	30	10	5	3.77	1.05
Lost	8	5	14	8	50	28	42	24	53	30	9	5	3.71	1.14
Unspecified	--	--	--	--	1	1	2	2	1	1	89	96	4.00	0.82
Total	12	3	30	6	113	24	94	20	115	24	108	23	364	3.74	1.09

* Scale results exclude cases that had missing values for survey item (n = 108).

Public financing was supported across all categories of candidates included in analysis. Appellate court candidates were largely supportive of this potential reform (*M* = 3.71, *SD* = 1.35), whereas supreme court candidates were one of the least supportive (*M* = 3.18, *SD* = 1.67), along with election winners (*M* = 3.18, *SD* = 1.37). That said, the survey data show candidates largely approve of voluntary reform efforts, with minor variations of support.

Informational reforms. As with voluntarist reforms, judicial candidates supported several of the informational reforms included in the survey (see Tables 5.38.1-5.38.6).

As shown in Table 5.38.1, voter guides were strongly supported by judicial candidates (*M* = 4.18, *SD* = 1.11), contrary to Rottman's (2002) conclusion. Across all levels of variables included for analysis, candidates greatly favored this reform. Including candidates' incumbency status on the ballots was somewhat supported (*M* = 3.30, *SD* = 1.46), as Table 5.38.2 shows. Closer examination of the results reveals stark divides between incumbents (*M* = 4.04, *SD* = 1.19) and non-incumbents (*M* = 2.90, *SD* = 1.48) and between election winners (*M* = 3.67, *SD* = 1.35) and defeated candidates (*M* = 2.87, *SD* = 1.47). Appellate court candidates were also far less supportive (*M* = 2.98, *SD* = 1.51) than candidates for other levels of the judiciary.

Judicial candidates were more divided when it came to including candidates' occupations on ballots (*M* = 3.02, *SD* = 1.36) (see Table 5.38.2). Both partisan candidates (*M* = 2.66, *SD* = 1.35) and non-incumbents (*M* = 2.89, *SD* = 1.38) disliked this reform proposal whereas those who benefit from already having the position (retention

Table 5.38.1. Information Reform: State-provided voter guides with information on all ballot-qualified candidates.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	--	--	4	6	11	15	21	32	45	9	13	62	4.21	0.96
Partisan	3	3	6	6	17	18	22	23	46	47	3	3	94	4.09	1.10
Non-Partisan	11	5	5	2	24	12	44	22	113	56	4	2	197	4.23	1.12
Unspecified	3	3	--	--	1	1	1	1	8	8	90	87	13	3.85	1.72
Office sought														
Supreme Court	1	6	1	6	3	18	5	29	7	41	--	--	17	3.94	1.20
Appellate Court	--	--	1	2	9	20	5	11	27	59	4	9	42	4.38	0.91
Trial Court	15	5	13	4	39	13	66	22	151	51	12	4	284	4.14	1.15
Other	1	5	--	--	2	10	4	19	13	62	1	5	20	4.40	1.05
Unspecified	--	--	--	--	--	--	2	2	1	1	89	97	3	4.33	0.58
Incumbent														
Incumbent	5	5	3	3	23	22	24	23	51	48	--	--	106	4.07	1.11
Non-Incumbent	8	4	8	4	18	9	41	22	108	57	7	4	183	4.27	1.09
Unspecified	4	2	4	2	12	7	17	10	40	23	99	56	77	4.10	1.17
Elected														
Won	8	4	6	3	34	17	48	24	97	48	10	5	193	4.14	1.08
Lost	9	5	8	5	19	11	33	19	100	57	7	4	169	4.22	1.15
Unspecified	--	--	1	1	--	--	1	1	2	2	89	96	4	4.00	1.41
Total	17	4	15	3	53	11	82	17	199	42	106	22	366	4.18	1.11

* Scale results exclude cases that had missing values for survey item (n = 106).

candidates and incumbents) were, unsurprisingly, the strongest supporters of this proposal (M = 3.21, SD = 1.31 and M = 3.14, SD = 1.34 respectively).

Given those results, it is surprising that candidates were more supportive of including the candidates' incumbency status on ballots (M = 3.30, SD = 1.46) (see Table 5.38.3). Appellate court candidates (M = 2.98, SD = 1.51), non-incumbents (M = 2.90, SD = 1.48), and defeated candidates (M = 2.87, SD = 1.47) were less supportive of this measure.

Findings related to campaign oversight committees (Table 5.38.4) also ran contrary to Rottman's (2002) conclusion, which suggested judges were less supportive of such measures. This particular reform had broad support from candidates (M = 3.43, SD = 1.25). Oversight committees received some support from all but supreme court candidates, who were evenly divided (M = 3.00, SD = 1.41).

Candidates also favored voluntary campaign workshops (M = 3.49, SD = 0.99) (see Table 5.38.5) and judicial performance evaluations conducted by an independent committee (M = 3.84, SD = 1.27) (see Table 5.38.6). Although most candidates were somewhat supportive of voluntary campaign workshops, supreme court candidates leaned more toward neutrality (M = 3.19, SD = 1.17). However, they were the most supportive when it came to performance evaluations (M = 4.06, SD = 1.09).

Table 5.38.2. Informational Reform: Include the candidates' occupations on ballots.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*		
	n	%	n	%	n	%	n	%	n	%	n	%	n	M	SD
Election type															
Retention	9	13	7	10	21	30	12	17	13	18	9	13	62	3.21	1.31
Partisan	26	27	13	13	32	33	8	8	13	13	5	5	92	2.66	1.35
Non-Partisan	32	16	25	12	68	34	28	14	43	21	5	2	196	3.13	1.34
Unspecified	4	4	--	--	5	5	1	1	3	3	90	87	13	2.92	1.55
Office sought															
Supreme Court	4	24	1	6	5	29	3	18	4	24	--	--	17	3.12	1.50
Appellate Court	6	13	5	11	18	39	5	11	7	15	5	11	41	3.05	1.24
Trial Court	58	20	34	11	97	33	39	13	55	19	13	4	283	3.00	1.36
Other	3	14	5	24	3	14	2	10	6	29	2	10	19	3.16	1.54
Unspecified	--	--	--	--	3	3	--	--	--	--	89	97	3	3.00	0.00
Incumbent															
Incumbent	17	16	13	12	38	36	14	13	24	23	--	--	106	3.14	1.34
Non-Incumbent	42	22	23	12	62	33	21	11	33	17	9	5	181	2.89	1.38
Unspecified	12	7	9	5	26	15	14	8	15	9	100	57	76	3.14	1.31
Elected															
Won	33	16	30	15	66	33	28	14	35	17	11	5	192	3.01	1.31
Lost	37	21	15	9	59	34	19	11	37	21	9	5	167	3.02	1.41
Unspecified	1	1	--	--	1	1	2	2	--	--	89	96	4	3.00	1.41
Total	71	15	45	10	126	27	49	10	72	15	109	23	363	3.02	1.36

* Scale results exclude cases that had missing values for survey item (n = 109).

Table 5.38.3. Informational Reform: Include the candidates' incumbency status on ballots.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	9	13	7	10	17	24	13	18	16	23	9	13	3.32	1.36
Partisan	21	22	11	11	21	22	14	14	27	28	3	3	3.16	1.52
Non-Partisan	31	15	25	12	43	21	31	15	66	33	5	2	3.39	1.46
Unspecified	4	4	1	1	4	4	2	2	2	2	90	87	2.77	1.48
Office sought														
Supreme Court	1	6	1	6	5	29	5	29	5	29	--	--	3.71	1.16
Appellate Court	11	24	5	11	9	20	8	17	9	20	4	9	2.98	1.51
Trial Court	48	16	36	12	65	22	43	15	91	31	13	4	3.33	1.46
Other	5	24	2	10	3	14	4	19	6	29	1	5	3.20	1.61
Unspecified	--	--	--	--	3	3	--	--	--	--	89	97	3.00	0.00
Incumbent														
Incumbent	7	7	2	2	24	23	20	19	53	50	--	--	4.04	1.19
Non-Incumbent	45	24	33	17	40	21	24	13	40	21	8	4	2.90	1.48
Unspecified	13	7	9	5	21	12	16	9	18	10	99	56	3.22	1.38
Elected														
Won	21	10	15	7	45	22	37	18	75	37	10	5	3.67	1.35
Lost	43	24	28	16	40	23	22	13	35	20	8	5	2.87	1.47
Unspecified	1	1	1	1	--	--	1	1	1	1	89	96	3.00	1.83
Total	65	14	44	9	85	18	60	13	111	24	107	23	3.30	1.46

* Scale results exclude cases that had missing values for survey item (n = 107).

Table 5.38.4. Informational Reform: Independent campaign oversight committees.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	3	4	11	15	12	17	25	35	12	17	8	11	3.51	1.13
Partisan	12	12	12	12	23	24	23	24	23	24	4	4	3.35	1.33
Non-Partisan	19	9	28	14	45	22	59	29	44	22	6	3	3.42	1.25
Unspecified	1	1	1	1	3	3	4	4	4	4	90	87	3.69	1.25
Office sought														
Supreme Court	3	18	4	24	3	18	4	24	3	18	--	--	3.00	1.41
Appellate Court	2	4	5	11	13	28	15	33	6	13	5	11	3.44	1.05
Trial Court	29	10	40	14	64	22	81	27	69	23	13	4	3.43	1.28
Other	1	5	3	14	3	14	9	43	4	19	1	5	3.60	1.14
Unspecified	--	--	--	--	--	--	2	2	1	1	89	97	4.33	0.58
Incumbent														
Incumbent	12	11	12	11	24	23	36	34	20	19	2	2	3.38	1.25
Non-Incumbent	19	10	27	14	42	22	48	25	47	25	7	4	3.42	1.30
Unspecified	4	2	13	7	17	10	27	15	16	9	99	56	3.49	1.15
Elected														
Won	20	10	31	15	43	21	62	31	36	18	11	5	3.33	1.25
Lost	15	9	21	12	39	22	49	28	44	25	8	5	3.51	1.25
Unspecified	--	--	--	--	1	1	--	--	3	3	89	96	4.50	1.00
Total	35	7	52	11	83	18	111	24	83	18	108	23	3.43	1.25

* Scale results exclude cases that had missing values for survey item (n = 108).

Table 5.38.5. Informational Reform: Judicial campaign workshops.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	1	1	5	7	31	44	17	24	8	11	9	13	3.42	0.88
Partisan	7	7	4	4	40	41	27	28	14	14	5	5	3.40	1.05
Non-Partisan	8	4	10	5	80	40	60	30	38	19	5	2	3.56	0.99
Unspecified	1	1	1	1	4	4	5	5	2	2	90	87	3.46	1.13
Office sought														
Supreme Court	2	12	1	6	7	41	4	24	2	12	1	6	3.19	1.17
Appellate Court	1	2	3	7	21	46	14	30	3	7	4	9	3.36	0.82
Trial Court	14	5	15	5	119	40	85	29	49	17	14	5	3.50	1.00
Other	--	--	1	5	6	29	6	29	7	33	1	5	3.95	0.94
Unspecified	--	--	--	--	2	2	--	--	1	1	89	97	3.67	1.15
Incumbent														
Incumbent	7	7	8	8	44	42	28	26	17	16	2	2	3.38	1.06
Non-Incumbent	8	4	6	3	76	40	57	30	35	18	8	4	3.58	0.98
Unspecified	2	1	6	3	35	20	24	14	10	6	99	56	3.44	0.91
Elected														
Won	8	4	8	4	92	45	55	27	29	14	11	5	3.46	0.94
Lost	9	5	12	7	63	36	52	30	31	18	9	5	3.50	1.05
Unspecified	--	--	--	--	--	--	2	2	2	2	89	96	4.50	0.58
Total	17	4	20	4	155	33	109	23	62	13	109	23	363	3.49	0.99

* Scale results exclude cases that had missing values for survey item (n = 109).

Table 5.38.6. Informational Reform: Judicial performance evaluations.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	2	3	5	7	11	15	18	25	28	39	7	10	64	4.02	1.11
Partisan	10	10	9	9	11	11	21	22	42	43	4	4	93	3.82	1.38
Non-Partisan	14	7	20	10	32	16	57	28	74	37	4	2	197	3.80	1.25
Unspecified	3	3	--	--	--	--	5	5	5	5	90	87	13	3.69	1.60
Office sought															
Supreme Court	--	--	2	12	3	18	4	24	8	47	--	--	17	4.06	1.09
Appellate Court	3	7	5	11	6	13	13	28	14	30	5	11	41	3.73	1.27
Trial Court	25	8	24	8	42	14	81	27	114	39	10	3	286	3.82	1.28
Other	1	5	2	10	3	14	3	14	11	52	1	5	20	4.05	1.28
Unspecified	--	--	1	1	--	--	--	--	2	2	89	97	3	4.00	1.73
Incumbent															
Incumbent	9	8	10	9	18	17	29	27	40	38	--	--	106	3.76	1.28
Non-Incumbent	15	8	19	10	23	12	49	26	77	41	7	4	183	3.84	1.30
Unspecified	5	3	5	3	13	7	23	13	32	18	98	56	78	3.92	1.19
Elected															
Won	15	7	22	11	32	16	54	27	71	35	9	4	194	3.74	1.27
Lost	14	8	12	7	21	12	46	26	76	43	7	4	169	3.93	1.27
Unspecified	--	--	--	--	1	1	1	1	2	2	89	96	4	4.25	0.96
Total	29	6	34	7	54	11	101	21	149	32	105	22	367	3.84	1.27

* Scale results exclude cases that had missing values for survey item (n = 105).

Structural reforms. Structural reforms, including changes in policy related to recusal and disqualification rules, regulating non-candidate groups, and campaign finance, varied in support (see Tables 5.39.1-5.39.6).

Candidates were somewhat supportive of stronger recusal/disqualification rules for judges (M = 3.55, SD = 1.12) (see Table 5.39.1). Judges standing for retention were more supportive of this measure (M = 3.76, SD = 1.07) than judges running for election (partisan candidates: M = 3.47, SD = 1.10, non-partisan candidates: M = 3.52, SD = 1.14). Appellate court candidates were also more supportive of this type of reform (M = 3.86, SD = 1.05) compared against trial court candidates (M = 3.46, SD = 1.12). Incumbents were the least supportive (M = 3.37, SD = 0.99) of all, followed closely by election winners (M = 3.41, SD = 1.08), though both still somewhat supported reform in this area.

Candidates were more supportive of limiting expenditures from non-candidate groups (M = 3.78, SD = 1.36) (see Table 5.39.2). Incumbents, non-incumbents, winners, losers – across all levels, candidates were supportive except in the case of supreme court candidates, who were the lone group of candidates who disapproved of such limitations (M = 2.71, SD = 1.53).

Candidates supported the campaign finance reforms measured by the survey. Overall, candidates preferred strong disclosure rules (see Table 5.39.3) over limiting campaign donations/expenditures (see Tables 5.39.2 and 5.39.4), consistent with Rottman's (2002) findings.

Requiring candidates to disclosure the source of all campaign contributions received the most support of any of the reforms assessed by the survey

Table 5.39.1. Structural Reform: Stronger recusal/disqualification rules.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*		
	n	%	n	%	n	%	n	%	n	%	n	%	n	M	SD
Election type															
Retention	2	3	4	6	21	30	16	23	20	28	8	11	63	3.76	1.07
Partisan	5	5	8	8	41	42	18	19	22	23	3	3	94	3.47	1.10
Non-Partisan	10	5	18	9	80	40	34	17	53	26	6	3	195	3.52	1.14
Unspecified	1	1	--	--	8	8	1	1	3	3	90	87	13	3.38	1.12
Office sought															
Supreme Court	--	--	2	12	7	41	3	18	5	29	--	--	17	3.65	1.06
Appellate Court	--	--	4	9	14	30	8	17	16	35	4	9	42	3.86	1.05
Trial Court	18	6	21	7	123	42	54	18	67	23	13	4	283	3.46	1.12
Other	--	--	2	10	6	29	4	19	8	38	1	5	20	3.90	1.07
Unspecified	--	--	1	1	--	--	--	--	2	2	89	97	3	4.00	1.73
Incumbent															
Incumbent	3	3	11	10	55	52	18	17	19	18	--	--	106	3.37	0.99
Non-Incumbent	12	6	14	7	67	35	33	17	55	29	9	5	181	3.58	1.19
Unspecified	3	2	5	3	28	16	18	10	24	14	98	56	78	3.71	1.09
Elected															
Won	10	5	18	9	87	43	38	19	40	20	10	5	193	3.41	1.08
Lost	8	5	12	7	62	35	29	16	57	32	8	5	168	3.68	1.15
Unspecified	--	--	--	--	1	1	2	2	1	1	89	96	4	4.00	0.82
Total	18	4	30	6	150	32	69	15	98	21	107	23	365	3.55	1.12

* Scale results exclude cases that had missing values for survey item (n = 107).

Table 5.39.2. Structural Reform: Limit expenditures from non-candidate groups.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	4	6	9	13	6	8	16	23	28	39	8	11	3.87	1.30
Partisan	14	14	11	11	12	12	22	23	35	36	3	3	3.56	1.46
Non-Partisan	19	9	18	9	24	12	53	26	83	41	4	2	3.83	1.33
Unspecified	2	2	--	--	--	--	3	3	8	8	90	87	4.15	1.46
Office sought														
Supreme Court	5	29	4	24	2	12	3	18	3	18	--	--	2.71	1.53
Appellate Court	2	4	4	9	6	13	12	26	18	39	4	9	3.95	1.19
Trial Court	30	10	29	10	29	10	74	25	123	42	11	4	3.81	1.36
Other	2	10	1	5	4	19	5	24	8	38	1	5	3.80	1.32
Unspecified	--	--	--	--	1	1	--	--	2	2	89	97	4.33	1.15
Incumbent														
Incumbent	12	11	13	12	13	12	23	22	45	42	--	--	3.72	1.41
Non-Incumbent	21	11	15	8	23	12	50	26	74	39	7	4	3.77	1.36
Unspecified	6	3	10	6	6	3	21	12	35	20	98	56	3.88	1.32
Elected														
Won	15	7	23	11	25	12	45	22	85	42	10	5	3.84	1.32
Lost	24	14	15	9	17	10	45	26	69	39	6	3	3.71	1.43
Unspecified	--	--	--	--	--	--	4	4	--	--	89	96	4.00	0.00
Total	39	8	38	8	42	9	94	20	154	33	105	22	3.78	1.36

* Scale results exclude cases that had missing values for survey item (n = 105).

Table 5.39.3. Structural Reform: Require the disclosure of the source of all campaign contributions.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	2	3	--	--	1	1	6	8	54	76	8	11	4.75	0.78
Partisan	3	3	2	2	6	6	10	10	73	75	3	3	4.57	0.94
Non-Partisan	4	2	2	1	8	4	22	11	159	79	6	3	4.69	0.78
Unspecified	1	1	--	--	1	1	2	2	9	9	90	87	4.38	1.19
Office sought														
Supreme Court	1	6	--	--	1	6	1	6	14	82	--	--	4.59	1.06
Appellate Court	--	--	--	--	2	4	1	2	39	85	4	9	4.88	0.45
Trial Court	9	3	4	1	10	3	35	12	226	76	12	4	4.64	0.88
Other	--	--	--	--	3	14	3	14	13	62	2	10	4.53	0.77
Unspecified	--	--	--	--	--	--	--	--	3	3	89	97	5.00	0.00
Incumbent														
Incumbent	3	3	1	1	7	7	9	8	85	80	1	1	4.64	0.88
Non-Incumbent	4	2	3	2	7	4	21	11	147	77	8	4	4.67	0.81
Unspecified	3	2	--	--	2	1	10	6	63	36	98	56	4.67	0.86
Elected														
Won	5	2	1	0	8	4	18	9	161	79	10	5	4.70	0.80
Lost	5	3	3	2	7	4	21	12	132	75	8	5	4.62	0.89
Unspecified	--	--	--	--	1	1	1	1	2	2	89	96	4.25	0.96
Total	10	2	4	1	16	3	40	8	295	63	107	23	4.66	0.84

* Scale results exclude cases that had missing values for survey item (n = 107).

Table 5.39.4. Structural Reform: Limit campaign contributions from attorneys and law firms.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*		
	n	%	n	%	n	%	n	%	n	%	n	%	n	M	SD
Election type															
Retention	5	7	13	18	9	13	15	21	20	28	9	13	62	3.52	1.35
Partisan	20	21	12	12	15	15	19	20	28	29	3	3	94	3.24	1.53
Non-Partisan	32	16	35	17	45	22	47	23	39	19	3	1	198	3.13	1.36
Unspecified	3	3	1	1	1	1	4	4	4	4	90	87	13	3.38	1.61
Office sought															
Supreme Court	4	24	1	6	4	24	2	12	6	35	--	--	17	3.29	1.61
Appellate Court	1	2	12	26	9	20	9	20	11	24	4	9	42	3.40	1.23
Trial Court	51	17	46	16	50	17	70	24	68	23	11	4	285	3.20	1.43
Other	3	14	2	10	6	29	4	19	5	24	1	5	20	3.30	1.38
Unspecified	1	1	--	--	1	1	--	--	1	1	89	97	3	3.00	2.00
Incumbent															
Incumbent	22	21	17	16	18	17	29	27	20	19	--	--	106	3.08	1.43
Non-Incumbent	30	16	29	15	42	22	37	19	46	24	6	3	184	3.22	1.41
Unspecified	8	5	15	9	10	6	19	11	25	14	99	56	77	3.49	1.39
Elected															
Won	29	14	36	18	39	19	48	24	40	20	11	5	192	3.18	1.36
Lost	30	17	25	14	29	16	36	20	51	29	5	3	171	3.31	1.47
Unspecified	1	1	--	--	2	2	1	1	--	--	89	96	4	2.75	1.26
Total	60	13	61	13	70	15	85	18	91	19	105	22	367	3.23	1.41

* Scale results exclude cases that had missing values for survey item (n = 105).

(*M* = 4.66, *SD* = 0.84) (see Table 5.39.3). Of the 367 candidates who responded to this survey item, only 14 candidates indicated any opposition to such policy reform.

Across all levels of the variables of interest, candidates leaned in favor of limiting campaign contributions from lawyers and firms (*M* = 3.23, *SD* = 1.41) (see Table 5.39.4). Judges standing for retention (*M* = 3.52, *SD* = 1.35) and appellate court candidates (*M* = 3.40, *SD* = 1.23) were among the strongest supporters of this reform, whereas incumbents (*M* = 3.08, *SD* = 1.43), non-partisan candidates (*M* = 3.13, *SD* = 1.36), and election winners (*M* = 3.18, *SD* = 1.36) held more neutral positions on this reform.

Limiting campaign expenditures received strong support from candidates (*M* = 3.40, *SD* = 1.38) (see Table 5.39.5). Despite the claim that capping expenditures is advantageous for incumbents (Bonneau, 2007b; Bonneau & Cann, 2011), non-incumbents held more favorable opinions regarding this reform (*M* = 3.47, *SD* = 1.42) than incumbents (*M* = 3.13, *SD* = 1.33). Appellate candidates were the strongest supporters of this proposed measure (*M* = 3.80, *SD* = 1.16), whereas supreme court candidates were least supportive (*M* = 2.94, *SD* = 1.71).

Though results show candidates overall are supportive of a number of reforms, candidates opposed any additional state-imposed regulations of campaign speech (*M* = 2.44, *SD* = 1.20) (see Table 3.39.6). Candidates for supreme court voiced the strongest opposition to this particular reform proposal (*M* = 1.94, *SD* = 1.14). Overall, every type of candidate included for analysis stood in opposition to any further campaign speech regulations.

Table 5.39.5. Structural Reform: Limit campaign expenditures.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*	
	n	%	n	%	n	%	n	%	n	%	n	%	M	SD
Election type														
Retention	5	7	12	17	7	10	18	25	21	30	8	11	3.60	1.34
Partisan	22	23	10	10	15	15	25	26	21	22	4	4	3.14	1.49
Non-Partisan	25	12	25	12	36	18	60	30	51	25	4	2	3.44	1.34
Unspecified	2	2	--	--	1	1	6	6	3	3	91	88	3.67	1.37
Office sought														
Supreme Court	6	35	1	6	3	18	2	12	5	29	--	--	2.94	1.71
Appellate Court	1	2	6	13	7	15	12	26	14	30	6	13	3.80	1.16
Trial Court	44	15	40	14	43	15	90	30	69	23	10	3	3.35	1.39
Other	3	14	--	--	5	24	5	24	7	33	1	5	3.65	1.39
Unspecified	--	--	--	--	1	1			1	1	90	98	4.00	1.41
Incumbent														
Incumbent	20	19	11	10	26	25	33	31	16	15	--	--	3.13	1.33
Non-Incumbent	27	14	24	13	24	13	52	27	56	29	7	4	3.47	1.42
Unspecified	7	4	12	7	9	5	24	14	24	14	100	57	3.61	1.33
Elected														
Won	29	14	25	12	37	18	60	30	41	20	11	5	3.31	1.35
Lost	24	14	22	13	21	12	47	27	55	31	7	4	3.51	1.42
Unspecified	1	1	--	--	1	1	2	2	--	--	89	96	3.00	1.41
Total	54	11	47	10	59	13	109	23	96	20	107	23	3.40	1.38

* Scale results exclude cases that had missing values for survey item (n = 107).

Table 5.39.6. Structural Reform: More state regulations concerning campaign speech.

	Strongly oppose		Some-what oppose		Neither support nor oppose		Some-what support		Strongly support		Un-specified		Scale*		
	n	%	n	%	n	%	n	%	n	%	n	%	n	M	SD
Election type															
Retention	14	20	17	24	17	24	11	15	3	4	9	13	62	2.55	1.17
Partisan	32	33	22	23	28	29	5	5	7	7	3	3	94	2.29	1.21
Non-Partisan	52	26	43	21	63	31	22	11	14	7	7	3	194	2.50	1.21
Unspecified	7	7	1	1	3	3	2	2	--	--	90	87	13	2.00	1.22
Office sought															
Supreme Court	8	47	4	24	4	24	--	--	1	6	--	--	17	1.94	1.14
Appellate Court	10	22	13	28	16	35	1	2	2	4	4	9	42	2.33	1.03
Trial Court	82	28	60	20	84	28	34	11	21	7	15	5	281	2.47	1.24
Other	5	24	4	19	7	33	4	19	--	--	1	5	20	2.50	1.10
Unspecified	--	--	2	2	--	--	1	1	--	--	89	97	3	2.67	1.15
Incumbent															
Incumbent	23	22	28	26	34	32	13	12	7	7	1	1	105	2.55	1.16
Non-Incumbent	61	32	36	19	57	30	14	7	13	7	9	5	181	2.35	1.22
Unspecified	21	12	19	11	20	11	13	7	4	2	99	56	77	2.48	1.21
Elected															
Won	47	23	46	23	61	30	27	13	10	5	12	6	191	2.51	1.16
Lost	58	33	36	20	48	27	13	7	13	7	8	5	168	2.33	1.24
Unspecified	--	--	1	1	2	2	--	--	1	1	89	96	4	3.25	1.26
Total	105	22	83	18	111	24	40	8	24	5	109	23	363	2.44	1.20

* Scale results exclude cases that had missing values for survey item (n = 109).

Candidates simultaneously appreciate the reasoning behind campaign speech regulations and recognize their faults. “I can understand the motivation for [regulations],” said Darren Kugler, a New Mexico trial court candidate, “but, it does make it somewhat more difficult because you feel like you're hogtied.” David Towler, a Texas appellate court candidate, echoed Kugler’s sentiments: “I agree with the rule, but at the same time, for a voter to inform themselves about the qualifications of a judicial candidate. It's work. I mean, it's not easy.”

Candidates see speech restrictions as barriers to open and transparent elections, which could better connect the electorate to the judiciary. “I would severely roll back the limits upon judicial comment,” said California trial court candidate, John Henry, “I would try to do something to … strongly encourage the candidates to be more open, honest, and free about their judicial views.”

Beyond acting as a barrier between the public and the judiciary, candidates also noted the idealism that motivates speech restrictions – namely that judicial candidates are devoid of personal political opinions. Courtney McAllister, a California trial court candidate, observed:

> “I think judges and judicial candidates are way too hampered in what they can say in campaigns. We know so much about them based on their backgrounds and … who's supporting them or opposing them, but yet they're not allowed to tell us that. It doesn't make any sense to me … Just because you express an opinion about something - to me - does not go to whether you can rule on it in an objective fashion. I mean that's ridiculous. We know these people have opinions, but we make it out like they don't and they're not allowed to, when we all know they do.

So wouldn't we rather know what those are before we put them in? That just seems obvious to me, but a lot of people in my profession don't agree with that. They think that no one is supposed to know what a judge possibly thinks about something. And that seems silly."

Judicial selection. Merit selection proved popular amongst candidates (see Tables 5.40.1 and 5.40.2) – it was the overall selection method of choice for both appellate judges (supported by *n* = 181, 38% of all candidates) and trial judges (supported by *n* = 149, 32% of all candidates). There was also strong support for non-partisan elections for both appellate judges (supported by *n* = 104, 22% of all candidates) and trial judges (supported by *n* = 148, 31%). Few candidates reported partisan elections as the system of choice for appellate judges (*n* = 33, 7%) or trial judges (*n* = 42, 9%). Even fewer candidates were supportive of the appointive systems, including appointment by the governor with/without legislative confirmation and legislative appointment or election.

Examining the breakdown of the data in Tables 5.40.1 and 5.40.2 reveals that even partisan candidates were not keen on partisan elections, with only 15% (n=15) supporting such a selection system for appellate judges and 19% (n = 18) supporting this system for the selection of trial judges. Candidates for trial court were supportive of non-partisan elections of trial judges (n = 119, 40%), more so than any other selection method. Likewise, candidates in partisan/non-partisan contests, non-incumbents, and those defeated in the election were also more supportive of non-partisan election of trial judges than other selection methods.

Table 5.40.1. "How do you think the following types of judges should be selected in your state?" (Appellate Judges).

	Merit selection followed by retention election		Non-partisan popular election		Appoint-ment by the governor with legislative con-firmation		Appoint-ment by the governor w/o legislative con-firmation		Partisan popular election		Legislative appoint-ment or election		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Election type														
Retention	45	63	10	14	4	6	2	3	3	4	1	1	6	8
Partisan	40	41	27	28	9	9	1	1	15	15	1	1	4	4
Non-Partisan	90	45	64	32	16	8	12	6	14	7	1	1	4	2
Unspecified	6	6	3	3	2	2	--	--	1	1	--	--	91	88
Office sought														
Supreme Court	7	41	6	35	2	12	1	6	1	6	--	--	--	--
Appellate Court	21	46	14	30	2	4	1	2	5	11	--	--	3	7
Trial Court	142	48	78	26	25	8	13	4	24	8	2	1	12	4
Other	10	48	6	29	2	10	--	--	1	5	1	5	1	5
Unspecified	1	1	--	--	--	--	--	--	2	2	--	--	89	97
Incumbent														
Incumbent	50	47	28	26	11	10	7	7	6	6	1	1	3	3
Non-Incumbent	79	42	63	33	13	7	6	3	23	12	1	1	5	3
Unspecified	52	30	13	7	7	4	2	1	4	2	1	1	97	55
Elected														
Won	102	50	50	25	15	7	6	3	14	7	2	1	14	7
Lost	79	45	52	30	14	8	9	5	19	11	1	1	2	1
Unspecified	--	--	2	2	2	2	--	--	--	--	--	--	89	96
Total	181	38	104	22	31	7	15	3	33	7	3	1	105	22

Table 5.40.1. "How do you think the following types of judges should be selected in your state?" (Trial Judges).

	Merit selection followed by retention election		Non-partisan popular election		Appoint-ment by the governor with legislative con-firmation		Appoint-ment by the governor w/o legislative con-firmation		Partisan popular election		Legislative appoint-ment or election		Un-specified	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Election type														
Retention	43	61	16	23	1	1	1	1	4	6	1	1	5	7
Partisan	34	35	35	36	3	3	1	1	18	19	1	1	5	5
Non-Partisan	68	34	93	46	7	3	8	4	18	9	1	1	6	3
Unspecified	4	4	4	4	1	1	1	1	2	2	--	--	91	88
Office sought	7	41	7	41	2	12	--	--	1	6	--	--	--	--
Supreme Court	20	43	13	28	1	2	1	2	4	9	--	--	7	15
Appellate Court	114	39	119	40	8	3	10	3	33	11	2	1	10	3
Trial Court	7	33	9	43	1	5	--	--	2	10	1	5	1	5
Other	1	1	--	--	--	--	--	--	2	2	--	--	89	97
Unspecified	41	39	40	38	6	6	5	5	9	8	1	1	4	4
Incumbent	59	31	89	47	4	2	4	2	27	14	1	1	6	3
Incumbent	49	28	19	11	2	1	2	1	6	3	1	1	97	55
Non-Incumbent	85	42	72	35	7	3	5	2	21	10	2	1	11	5
Unspecified	64	36	74	42	5	3	5	3	21	12	1	1	6	3
Elected	--	--	2	2	--	--	1	1	--	--	--	--	90	97
Won	149	32	148	31	12	3	11	2	42	9	3	1	107	23
Lost	43	61	16	23	1	1	1	1	4	6	1	1	5	7
Unspecified	34	35	35	36	3	3	1	1	18	19	1	1	5	5
Total	68	34	93	46	7	3	8	4	18	9	1	1	6	3

Candidates are well aware that no selection process is perfect and that regardless of the method used, politics are bound to be present. “Both [elections and merit selection] are adequate generally to screen out anybody that's quite unsuitable,” said one trial court candidate, “Neither one is guaranteed to select the best person for the job, but it's kind of like what they say about democracy ... it's not that good but you can't find a better way.” James Rowe, West Virginia Supreme Court candidate, further observed the inevitability of politics involved in the selection of judges: “The process, regardless of what approach you take, it's a political process.”

Though scholars see them as the catalyst for diminished public trust in the judiciary, elections are not completely out of fashion with judicial candidates. “In some contexts, [the elective system is] a really good thing,” said Texas appellate court candidate, Lawrence Praeger, “but when you get into a large community where number one, there's no media interest and number two, there's so many judges on the ballot it becomes simply an exercise in party politics.” According to judicial candidates, there is a time and place for judicial elections – particularly at the trial court level where a smaller electorate can be more effectively reached by campaigns.

Candidates, though favorable toward merit selection of judges, recognize the inherent weaknesses of such a selection system – namely the politics of appointment. “I haven't heard a good [selection method] because if we had an appointment system, it would just be the same old thing,” said one Texas appellate court candidate, “It would be a good ole' boy system – favoritism.” The feeling that merit selection is equally political as elections, if not more so, was a common theme amongst candidates. As one California trial court candidate put it, “[The appointment process] is way more political because it's

all about connections and who you know and how much money you contributed to governors and legislators. I mean, that's what it comes down to."

Candidates' fears over the politics of appointment appears to conflate appointment with merit selection, such as one candidate who in expressing his view on selection systems noted, "Overall I think [the elective system] is better than somebody doing the appointing because ultimately it's going to be one person's view as opposed to the total population's view." However, in the case of merit selection, as John Baker, an Indiana judge standing for retention, explained, no one person selects judges under such a system. "The governor can pick from those three people [nominated by the commission] - he can't pick anybody he wants, "explained Baker, "If the nominating commission picks the right three people then that - theoretically the governor can't make a mistake."

Transitioning to merit selection, as discussed in Chapter Two, has been the subject of debate since the inception of the Missouri plan in 1940. Despite recent calls for selection reform, "It's never really gotten ground and taken off," said North Carolina trial court candidate, Susan Burch. States that choose to elect their judges have an arduous path ahead of them should they opt to select their judges through other means. Kentucky Supreme Court candidate, Janet Stumbo, explained:

> "Well we've all talked about for many years whether to go to appointed judges or even the Missouri Plan with retention elections. I don't think that will happen in Kentucky. Kentucky citizens like to elect their officials and I just don't see us being able to amend the constitution to make any major changes and that's what it would take."

Powerful groups, as Clair Dickinson explained, also act as a barrier to change. “It's not going to happen in Ohio,” said Dickinson, “As soon as you start talking about it, interest groups including the political parties … come out against.”

Summary. Overall, candidates support the voluntarist, informational, and structural reforms included in the survey, with one key exception – candidates did not favor additional state-imposed campaign speech regulations. Candidates understood the reasoning behind speech regulations, but view them as being the product of naïve idealism. Judicial candidates, they noted, are not completely devoid of personal political opinions.

Candidates favored merit selection for both trial and appellate courts, though the majority supported non-partisan popular elections for trial court judges. Despite this finding, candidates identified a number of issues with both merit and elective systems. Despite the popularity of merit systems, candidates expressed concern over the feasibility of switching selection systems given the barriers to change (e.g., gaining enough popularity to pass a state constitutional amendment, overcoming attacks from political parties and interest groups, etc.).

Chapter Six

Conclusion

This study examined the role of the media in judicial campaigns, the methods candidates use in their campaigns, how candidates develop campaign messages, controversial campaign speech, the consequences of campaigning, and judicial candidates' beliefs as to how elections could be improved. Survey data along with data from follow-up interviews were used to address these issues. The findings are discussed further in this section.

The Media

For judicial candidates, substantial coverage from the traditional press is neither expected (73% of candidates did not expect to receive significant coverage) nor is it received (51% report receiving minimal or no coverage). Non-traditional media sources (e.g., talk radio, political blogs, social media) played a minor part in providing campaign coverage (41% did not receive any coverage from talk radio, political blogs, or social media), with the exception of social media, which proved to be a popular venue for campaign coverage (39% of candidates reported receiving significant attention from social media). Many candidates find media coverage lacking in terms of amount (45% felt that coverage was inadequate) and focus on important issues, though few find it sensationalist (31% of candidates), biased (28% of candidates), or focused on strategy (7% of candidates) or horserace aspects of the race (6% of candidates). Judicial campaigns simply lack the appeal of other, more high profile campaigns that feature "red meat" political topics, such as personal views on abortion or immigration, to generate substantial coverage. Candidates understand the market pressures that ultimately decide

who and what gets covered in the press and they are aware of the little interest the public has in the court's operation. Overall, the media are simply passive and non-investigative when it comes to covering judicial campaigns.

The media are active when it comes to initiating various events (i.e., interviews, talk shows, addressing editorial boards, etc.). Candidates do everything they can to generate news, though they are somewhat selective when it comes to getting in front of community groups (10% report turning down offers to speak to such groups). Group support can quickly wane in partisan contests, as Florida candidate Stephen Burk learned once the local Tea Party chapter discovered his affiliation with the Democratic Party. Many candidates (48%) report having a somewhat positive relationship with the news media, though some express frustration over the media's reasoning for endorsing candidates and the politics of gaining (positive) media coverage. Overall, candidates do not feel the media are a complete failure.

Traditional media coverage is viewed as helpful but not entirely essential for securing electoral success. Candidates expressed doubt in the influence newspapers play in judicial elections due to both changes in how elections are covered (i.e., passive, non-investigative) and declining readership.

Campaign Methods

Candidates attempt to gain media coverage through giving interviews to journalists (45%), sending out press releases (38%), meeting with editorial boards (30%), and by other means, but they find them largely ineffective in terms of disseminating campaign information (none fell between "somewhat" or "very" effective). The press simply does not cover most candidates. Candidates held more favorable opinions of the

effectiveness of having a professional press coordinator/secretary on staff. Hired staffers likely played more than one role, serving more as general campaign gurus than in one particular capacity. Regardless, candidates, many of whom simultaneously serve as judge or run their own practice and campaign, no doubt appreciate any help they can get.

Paid media were rated higher in terms of effectiveness (with the exception of newspaper advertising, all paid media were rated between "somewhat" and "very" effective) compared to free media. TV ads are popular among supreme court candidates (59%) and, to a lesser degree, appellate court candidates (26%). Trial court candidates primarily stick with radio, newspaper and outdoor ads, though a fraction (18%) of these candidates report using television ads in their campaigns. Candidates do not doubt the effectiveness of expensive, but far-reaching TV ads (the third highest rated form of campaign communications behind personal canvassing and direct mail) – some going so far as to cite TV ads as the ultimate deciding factor in their election.

Direct communications proved to be the most heavily used form of campaign communications. Candidates commonly used low-cost methods, such as e-mail (49%), social media (53%), and websites (56%). Despite some skepticism that direct mail (or "slick pieces of mail" as one candidate described them) may be getting drowned out by other campaigns, candidates find the method effective (the second most effective method behind personal canvassing), no doubt in part due to the availability of mailing lists that allow candidates to target likely voters or other specific segments of the public in a cost effective manner. Direct communications may also be popular due to the degree of control candidates have over the message (as opposed to media coverage) and the

richness of the media, with electronic communications providing a platform for in-depth information about the candidates and campaigns.

Candidates have a difficult time determining what communications are working for their campaign. Measuring audience feedback is often difficult or virtually impossible. Electronic communications (e-mail, websites, social media) allow for greater measurement of audiences, but are seen as less effective than costlier methods (e.g., direct mail, yard signs, personal canvassing, and brochures).

The most effective campaign methods are also the most costly. The most effective method, personal canvassing, is time-intensive and would likely require most candidates to temporarily shutter their legal practices for the duration of the election. Direct mail, perceived to be the second most effective communication method, is costly (due to production and distribution costs) but enticing given the perceived cost effective appeal of targeting likely voters. Television spots were also highly rated and, given their growth in popularity over the past decade, will remain a desirable choice for candidates.

Budgets ultimately dictate which campaign methods candidates use. Candidates focus on cost effective methods, such as direct mail, paid media, websites, that allow them to "get the biggest bang for the buck." Candidates hire consultants who can produce professional content (e.g., websites and paid forms of advertising), but they rely on a number of perceived experts in their method selection. Candidates turned to other elected officials to determine what worked in their campaign – either through direct contact or through their own observation of the campaign. Professional campaign consultants and political science research are also queried by candidates for advice on what methods to

use in their campaign. The constraints of the medium (e.g., length of message, leanness of messages) and reach are often taken into consideration.

Voters' expectations also drove candidates' campaign methods. Candidates may be doubtful of the impact social media had on their election, but for some, such as one Texas candidate, they were essential to demonstrate that the candidate exists and is "with it." Candidates sometimes have no choice but to show up at candidate forums, even when doing so may not result in more votes. Not all appearances result in more votes, but not showing would almost certainly cost one's reputation in some communities.

Campaign Messages

Despite the *White* decision, candidates typically refrain from addressing political issues in their campaigns. Regulations, according to some candidates, mandate a bland campaign – nothing beyond vague discussions of character and a resumé. Although regulations place boundaries around a candidate's campaign, a number of other factors (e.g., the candidate's personal experience, family and friends, voter expectations, political consultants, other candidates and campaigns) influence the campaign messages candidates develop. Ultimately, candidates develop messages they believe will get them elected and, for the majority of candidates, that means discussing why they believe they are qualified for office.

Politics is not foreign to judicial candidates, many of whom report being involved in politics for most of their lives either by serving in public office – both within and outside of the judiciary – through a family member or, at the very least, by maintaining an active interest in public policy. Candidates use this base of experience to inform their expectations of judicial campaigns, such as the case with Oregon appellate court

candidate, James Egan, who knew to expect a rather boring, uneventful campaign based on his interactions with elected officials.

Although campaigns are becoming more professionalized, must remain resourceful due to the high costs of campaigning. Any possible resource that they are connected to is tapped – whether that means enlisting family members to help with their campaigns or using a family member's connection to the cast of *West Wing* to reunite the cast for a campaign ad, as Michigan Supreme Court candidate Bridget McCormack did (Haglund, 2012). They borrow campaign ideas from other candidates. They actively attempt to target communications to specific voters and try to create campaign messages that resonate with those likely to vote in the election.

Paid consultants are likely to enjoy a fruitful future in judicial campaigns as more than one third of all candidates (35%) hired a paid professional to help with their campaign. Many candidates use professionals for media advertising (61%), direct mail services (50%), and campaign management (50%). Few candidates report relying on consultants for research (either issue or opposition research – 8% - or polling – 19%), legal advice (7%), financial activities (accounting – 22% - and fundraising – 24%), or for direct campaigning purposes (mass telephone calling – 21% - and get-out-the-vote activities – 13%). Rather than acting as campaign architects in total control of all aspects of the campaign, they are hired for logistical reasons (e.g., making media purchases) and for their knowledge and experience. Though candidates seek advice from consultants, they believe that they are ultimately the ones who craft their campaign messages.

Candidates for supreme court branch out into other activities, such as polling (used by more than half of such candidates), fundraising (also used by half), and

issue/opposition research (used by one-third). Consultants act as a sounding board for candidates and help in areas where candidates have limited knowledge, but are not generally in positions to call all the shots as few have direct experience with judicial campaigns or with the candidates' specific electorate.

Controversial Campaign Speech

Issue positions. Experience and qualifications and character and ethics are still the primary themes of judicial campaign messages (almost two-thirds of candidates say they stressed them "a great deal" in their campaign communications). Few candidates focus their campaign communications on issue positions (42% did not discuss them). Looking at the issues that are discussed by judicial candidates, results are similar to Arbour and McKenzie (2011), who reported court administration issues or crime and sentencing issues were the predominant theme for the majority of lower court candidates in 2008. A small minority of judicial candidates discusses "hot button" issues (e.g., abortion, marriage equality). Most candidates who engage in policy talk limit their discussion to issues relevant to the office, such as court administration (81% of those who discussed issue positions) and crime and sentencing (discussed by 55% of those who focused on issue positions).

Candidates' attitudes toward discussing issue positions are guided by more than just the law. Many note the undesirability of outspoken judges and consider personal political beliefs irrelevant to the duties of a judge. They also recognize outspokenness as a hindrance to their professional performance because outspoken judges will face more scrutiny and potential recusal from cases. The increased scrutiny and recusal from cases can ultimately depriving them of their ability to fulfill the core functions of the office.

To avoid discussing issue positions, candidates respond with boilerplate answers to inquiries from the public or the press, such as Chris Cobey's usual response ("I will enforce the law as I understand the law"), but they also opt to speak in general, quasi-political terms, such as the case with Elizabeth Best, who reminded voters that she believed the US Constitution "protects life, liberty, and the pursuit of happiness" when confronted about her views on abortion. Candidates also use interest group association (e.g., being connected to a local LGBT association) to convey their political beliefs.

Negative campaigning. Candidates clearly do not like personally attacking their opponents (e.g., discussing an opponent's religious beliefs or sexual orientation was deemed appropriate by less than 5% of candidates), but are willing to bring up recent subjects that have some legal implication (e.g., a DUI, using campaign funds for personal use, a bribery conviction were all considered appropriate topics). Some topics (e.g., marital infidelity, marijuana or cocaine use as a youth) may have lost their effectiveness due to social normalization. Despite these encouraging findings, the current political landscape allows for supposed third-party groups, including PACs, to act as surrogates for the rough and tumble politics candidates find distasteful.

Consequences of Campaigning

Positive outcomes. Candidates, though often critical of elections, did note a number of positive outcomes associated with them. Elections help bolster connections between the public and the courts. They serve as a venue for meaningful communication, particularly regarding content that encourages voters to learn about the courts or allows judges to better understand the community they serve. Campaigning for office encourages candidates to learn more about the community the office serves.

Elections fulfill democratic ideals. In an election, the public chooses who serves in office. Running for office helps fulfill that ideal by providing voters a choice, but elections also help keep judges "in check" with the public, which according to some candidates helps strengthen the public's perception of the judiciary as candidates must demonstrate their superior qualifications for office. Issues relevant to the community that would possibly go unnoticed may surface during a competitive election.

Elections have a profound personal impact on candidates as they encourage self-reflection and validate candidates. Candidates challenge themselves by stepping outside of what they are comfortable with and take risks that result in personal rewards. They demonstrate to themselves that they have the courage to stand up to public scrutiny, including opposing groups and individuals. On a more commercial level, candidates who run an active campaign also note a boom in business for their legal practices following the election. Candidates may not have to face judges they challenged in the courtroom following the election, which can also be viewed as a benefit.

Troubling outcomes. Despite the concerns raised over "noisy and nasty" campaigns, most judicial candidates run positive campaigns (nearly a fifth of candidates reported the election was "overwhelmingly positive"). Misrepresentation is uncommon but not entirely absent; one-third of candidates were misrepresented during their campaigns. Candidates are frequently at a disadvantage when it comes to launching corrective counter campaigns due to limited resources and available communication channels. If an external group were to launch negative ads in the last week of an election, most candidates would be unable to find the funds or available advertising space to counter such an attack.

Candidates do not view negative campaigning as being effective or appropriate. They believe personal attacks are harmful to their electoral prospects and that such campaigning runs contrary to what judicial campaigns "should be" (i.e., professional affairs). Candidates believe voters expect more "above-bar" campaigns from them than they do from other elected officials.

Candidates understand the rationale behind speech regulations, but find them frustrating nonetheless. Speech restrictions further the gap in the public's knowledge of the judiciary, making information scarce and transparency impossible. Candidates find their communications are sometimes limited to general preformed responses, particularly when they are presented with questions concerning their personal political views. Restrictions have a declining impact as the amount of candidate information available to the general public through online channels increases. The public is better able to draw conclusions concerning candidates' political leanings based on the candidate's personal social media page and a number of other online resources (e.g., the candidate's personal blog, law review articles concerning policy authored by the candidate, online news articles that reveal the candidate's political associations, etc.).

Most candidates cannot reach their electorate adequately due in large part to the cost of communications. Ballots are overcrowded and electorates can be massive in size for some candidates. It is no surprise that candidates share a general sense that judicial elections are largely arbitrary. Candidates recognize the corruptive power of campaign donations, but are not in a position to turn down funding. External groups are active in few contests outside of state supreme court contests (more than half of appellate and trial court candidates report political parties were not at all active or merely somewhat active,

whereas more than half of supreme court candidates felt they were very or extremely active). A greater proportion of candidates report receiving funding from interest groups (21%) than political parties (12%). Political parties provide a good deal of support through other means, such as the including the candidate in party campaign materials, hosting candidate forums, and providing the candidate access to networks of voters, which can be beneficial not only for donations and votes, but also for logistical reasons, such as gathering the number of required signatures to appear on the ballot.

Despite the shortcomings of elections, most candidates report a positive experience, except for supreme court candidates, who were equally divided regarding whether they reported a positive or a negative experience. Appellate and trial court candidates report an equally more positive experience. Candidates are more than willing to run again in the future – 27% report that will "almost certainly" run again in the future.

Improving Selection

Candidates support voluntary campaign agreements among candidates and most informational reforms, though they are divided when it comes to including more information about the candidates on the ballots (candidates' occupations, incumbency status). Candidates were supportive of campaign oversight committees.

Strict disclosure rules were strongly supported and most other structural reforms (recusal/disqualification rules, limiting contributions from lawyers/law firms, limiting campaign expenditures) received some level of support, with a few noteworthy exceptions. Supreme court candidates were the lone dissenters in limiting expenditures from non-candidate groups (more than half of those candidates strongly or somewhat opposed such reform). Considering these candidates reported an overall negative attitude

toward external group involvement, this finding highlights the reluctantly dependent relationship between supreme court candidates and external groups. Candidates are well aware that money is necessary to win election and are willing to put aside their dislike for interest groups and political parties in order to secure funds.

Candidates strongly oppose speech regulations. They favor more communication, not less – as indicated by the finding that disclosure reforms received the highest level of support. Respondents gave a sense that speech regulations are rather farcical. Candidates and voters are well aware that judges have personal political opinions but candidates must act as though they do not.

Candidates have faith in both retention/merit selection systems and elections, but at different levels of the judiciary. At the appellate level, candidates are supportive of retention/merit systems (favored by 38% of candidates). Some candidates against merit selection appear to conflate it with appointment, where one individual (e.g., the governor) selects judges. Regardless, they identify issues with the politics of reaching nomination and ultimately appointment (i.e., having to deal with the "good ole' boys" network, knowing the "right people").

At the trial court level, candidates are somewhat divided between retention (favored by 34%) and non-partisan elections (favored by 46%), with the latter being slightly more popular. Smaller in scale, trial court contests are unlikely to draw undesired attention from external interest groups or require large media-driven campaigns. Trial court candidates have a greater belief that their campaigns are effective at informing voters of their candidacy compare to other candidates. Most (55%) report never being misrepresented during the course of the campaign.

Limitations

This study sought a census of all judicial candidates who ran for election or retention in 2012. However, due to a number of factors, including unavailable or incorrect contact information, the survey response rate (18%) was less than expected. Future studies could attempt to partner with legal organizations (e.g., the ABA, Justice at Stake Campaign, the Brennan Center for Justice) to further the reach and strengthen perceived credibility of the survey source, which in turn would hopefully spur a larger response rate.

This study relied on self-reported data, which is subject to bias. Future studies could bolster self-reported data with data drawn from other sources and methods. Interviews with campaign staff, articles from newspapers, campaign website content – a number of data sources exist from which to construct a more detailed assessment of some of the questions posed by this investigation, as well as other research questions related to judicial campaigns and elections.

Future Research

Future research should continue to ask similar questions of judicial candidates over a number of years to monitor changes in judicial campaigns. However, a more focused approach could consider four specific findings of this study. First, as social media proved popular with candidates, further investigation could examine how candidates use social media in their campaigns. Previous research (Stromer-Galley, 2006) suggests candidates avoid online interactions with voters due to lack of ambiguity, loss of control, and due to the perceived burdensome nature of the medium. It is possible that candidates' attitudes toward online interaction have changed in the past decade, though

given that judicial candidates are constrained in their speech, it is likely that the desire to remain in control of the message, as well as maintain ambiguity, remains with this particular type of candidate.

Second, future studies could further investigate campaign communications methods used by candidates. As this study found, candidates are becoming more adept at using data to inform their campaigning methods – as with the case of using data-driven mailing lists to selectively target campaign communications. How effective – and costly – these particularly services are will become increasingly important to understand as resource-strapped candidates will continue to look for cost effective ways to campaign. The timing of campaign communications could also be studied further. Knowing the sequence of campaign communications could provide a better understanding of the dynamic nature of judicial campaigns (e.g., How do candidates respond to the oppositions' campaign materials? What sequence do candidates' campaign communications follow and why?). Content analyses could further examine not only the text of campaign communications, but the imagery used by candidates. Combined with survey and interview data, a study could examine how candidates determine what images to use to best represent their campaign.

Third, investigations could study changes in attitudes toward controversial campaign speech topics (issue positions, negative campaign speech). The majority of candidates do not place a great deal of emphasis on their issue positions nor do a great deal of candidates face negative campaigning, though that may change, particularly if politically outspoken/mudslinging candidates are successful at getting elected to office as candidates learn how to campaign (in part) through the observation of others' campaigns.

Lastly, the role interest groups are playing in judicial elections needs to be taken into consideration. As this study demonstrated, interest groups play an active role in judicial elections – sometimes to a greater extent than political parties. Candidates are typically ill-equipped to counter interest groups' campaign messages. Well-funded interest groups can essentially take control of communications media through large media buys. How interest groups are involved in judicial campaigns continues to be an important area of research.

Conclusion

The findings of this study contribute to the research related to judicial campaigns and elections and campaign communications in general in that the data gathered through surveys and interviews sheds light on a number of issues raised by legal scholars. Rather than resorting to speculation over the theorized changes in judicial campaigns, this study provides substantial evidence concerning the perspectives held by candidates. The findings demonstrate that though scholars were increasingly concerned with judicial candidate speech and campaign finance in the past, there is evidence that external group involvement in judicial elections – namely from interest groups – is bound to be increasingly controversial in the years to come.

There are reasons to be concerned with the state of judicial elections, but the deregulation of judicial candidate speech is probably not among the greatest of them. The news media have little import in judicial campaigns, thereby making costly promotional communications essential. Judicial candidates, particularly at the appellate level, lack the ability to campaign effectively. Communication channels are expensive and are difficult to access at times when multiple campaigns for high-level office are occurring

simultaneously. Resource-rich interest groups have the potential to easily overwhelm elections. Countering misrepresentations from such groups or competitors is also challenging, given the lack of news coverage and common large resource deficits candidates face.

Potentially harmful speech, such as communications related to issue positions or negative advertising, is not commonplace in most judicial elections. Simply because candidates are legally able to engage in discussion of their issue positions does not mean they will. A number of factors (e.g., perceived voter expectations, personal background and experience with campaigns, attitudes toward revealing personal opinions) affect how candidates craft campaign messages beyond what is legally allowed. Candidates favor transparent elections and speech regulations only further impede voters from having relevant information about judicial candidates.

References

Aabramson, H. W., & Lee, G. (2004). The ABA Model Code revisions and judicial campaign speech: Constitutional and practical implications. *Touro Law Review, 20*(3), 729-750.

Abbe, O. G., & Herrnson, P. S. (2002). How judicial election campaigns have changed. *Judicature, 85*(6), 286-295.

Abbe, O. G., & Herrnson, P. S. (2003). Public financing for judicial elections? A judicious perspective on the ABA's proposal for campaign finance reform. *Polity, 35*(4), 535-554.

Alozie, N. O. (1996). Selection methods and the recruitment of women to state courts of last resort. *Social Science Quarterly, 77*(1), 110-126.

Alsdorf, R. H. (2003). The sound of silence: Thoughts of a sitting judge on the problem of free speech and the judiciary in a democracy. *Hastings Constitutional Law Quarterly, 30*(2), 197-236.

American Bar Association. (1990). Model Code of Judicial Conduct, Canon 5A(3)(d)(ii).

American Bar Association. (2010). National database on judicial diversity in state courts. Retrieved from http://apps.americanbar.org/abanet/jd/display/national.cfm

American Bar Association. (2011). Model Code of Judicial Conduct, from http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html

American Judicature Society. (2012). Judicial selection in the states. Retrieved from http://www.judicialselection.us/

Arbour, B. K., & McKenzie, M. J. (2010). Has the “new style” of judicial campaigning reached lower court elections? *Judicature, 93*(4), 150-160.

Arbour, B. K., & McKenzie, M. J. (2011). Campaign messages in lower-court elections after Republican Party of Minnesota vs. White. *Justice System Journal, 32*(1), 1-24.

Aspin, L. (1998). Campaigns in judicial retention elections: Do they make a difference? *Justice System Journal, 20*(1), 1-15.

Aspin, L., & Hall, W. K. (1987). The friends and neighbors effect in judicial retention elections. *Western Political Quarterly, 40*(4), 703-715.

Aspin, L., Hall, W. K., Bax, J., & Montoya, C. (2000). Thirty years of judicial retention elections: An update. *Social Science Journal, 37*(1), 1-17.

Bannon, A., Velasco, E., Casey, L., & Reagan, L. (2012). The new politics of judicial elections 2011-2012: How new waves of special interest spending raised the stakes for fair courts. Retreieved from: http://newpoliticsreport.org/report/2012-report/

Baran, J. W. (2002). Compelled disclosure of independent political speech and constitutional limitations. *Indiana Law Review, 35*(3), 769-780.

Barnhizer, D. (2001). 'On the make': Campaign funding and the corrupting of the American judiciary. *Catholic Law Review, 50*, 361-427.

Baschab, P. W. (2002). The walking judge from Alabama. *Fordham Urban Law Journal, 29*(3), 827-834.

Baum, L. (1986). The selection of judges. In L. Baum (Ed.), *American courts: Process and policy* (pp. 101-136). Boston: Houghton Mifflin.

Bayne, W. C. (2000, October 29). Lynchard's candidacy, ads puttig spice into justice race, *Commercial Appeal*, p. DS1.

Beechen, P. D. (1974). Can judicial elections express the people's choice? *Judicature, 57*(6), 242-246.

Bend, D. (2005). North Carolina's public financing of judicial campaigns: A preliminary analysis. *Georgetown Journal of Legal Ethics, 18*(3), 597-609.

Benesh, S. C. (2006). Understanding public confidence in American courts. *Journal of Politics, 68*(3), 697-707. doi: 10.1111/j.1468-2508.2006.00455.x

Berkson, L. C., & Caufield, R. (1980/2004). Judicial selection in the United States: A special report (pp. 1-3): American Judiacture Society. Retrieved from: http://www.judicialselection.com/uploads/documents/JNC_Survey_ReportFINAL3_92E04A2F04E65.pdf

Besser, M. D. (2003). May I be recused? The tension between judicial campaign speech and recusal after Republican Party of Minnesota v. White. *Ohio State Law Journal, 64*, 1197-1227.

Bonneau, C. W. (2005). Electoral verdicts: Incumbent defeats in state supreme court elections. *American Politics Research, 33*(6), 818-841. doi: 10.1177/1532673X04273414

Bonneau, C. W. (2007a). Campaign fundraising in state supreme court elections. *Social Science Quarterly, 88*(1), 68-85.

Bonneau, C. W. (2007b). The effects of campaign spending in state supreme court elections. *Political Research Quarterly, 60*(3), 489-499. doi: 10.1177/1065912907305680

Bonneau, C. W., & Cann, D. M. (2011). Campaign spending, diminishing marginal returns, and campaign finance restrictions in judicial elections. *Journal of Politics, 73*(4), 1267-1280. doi: 10.1017/s0022381611000934

Bonneau, C. W., & Hall, M. G. (2009). Debunking popular myths of judicial reform. In C. W. Bonneau & M. G. Hall (Eds.), *In defense of judicial elections* (pp. 128-139). New York: Routledge.

Bonneau, C. W., Hall, M. G., & Streb, M. J. (2011). White noise: The unrealized effects of Republican Party of Minnesota v. White on judicial elections. *Justice System Journal, 32*(3), 247-268.

Brace, P., & Boyea, B. D. (2008). State public opinion, the death penalty, and the practice of electing judges. *American Journal of Political Science, 52*(2), 360-372.

Brace, P., & Hall, M. G. (1990). Neo-institutionalism and dissent in state supreme courts. *Journal of Politics, 52*(1), 54-70.

Brace, P., & Hall, M. G. (1997). The interplay of preferences, case facts, context, and rules in the politics of judicial choice. *Journal of Politics, 59*(4), 1206-1231.

Brace, P., & Hall, M. G. (1999). Judicial choice and the politics of abortion: Institutions, context, and the autonomy of courts. *Albany Law Review, 62*(4), 1265-1303.

Brace, P., & Hall, M. G. (2001). 'Haves' versus 'have nots' in state supreme courts: Allocating docket space and wins in power asymmetric cases. *Law & Society Review, 35*(2), 393-417.

Brandenburg, B., & Schotland, R. A. (2008). Justice in peril: The endangered balance between impartial courts and judicial election campaigns. *Georgetown Journal of Legal Ethics, 21*(4), 1229-1258.

Brody, D. C. (2004). Judicial campaign speech restrictions after White: New York weighs in. *Justice System Journal, 25*(1), 107-113.

Brooks, R. R. W., & Raphael, S. (2002). Life terms or death sentences: The uneasy relationship between judicial selections and capital punishment. *Journal of Criminal Law & Criminology, 92*(3/4), 609-639.

Brown, G. D. (2008). Political judges and popular justice: A conservative victory or a conservative dilemma. *William & Mary Law Review, 49*(5), 1543-1619.

Burke, D. J. (1993). Code of Judicial Conduct Canon 7B(1)(c): Toward the proper regulation of speech in judicial campaigns. *Georgetown Journal of Legal Ethics, 7*, 181-211.

Butler-Kisber, L. (2010). *Qualitative inquiry: Thematic, narrative and arts-informed perspectives*. Thousand Oaks, CA: Sag Publications.

Cameron, A. C. (2003). Can an elected judge maintain the integrity of the judicial system? *Journal of the Legal Profession, 28*, 115-124.

Cann, D. M. (2007). Justice for sale? Campaign contributions and judicial decisionmaking. *State Politics & Policy Quarterly, 7*(3), 281-297. doi: 10.1177/153244000700700303

Cann, D. M., & Yates, J. (2008). Homegrown institutional legitimacy: Assessing citizens' diffuse support for state courts. *American Politics Research, 36*(2), 297-329.

Carrington, P. D. (1998). Judicial independence and democratic accountability in highest state courts. *Law and Contemporary Problems, 61*(3), 79-126.

Carwile, T. L. (2007). Stop restricting speech and educate the public: A review of the ABA'S proposed campaign activity canon of the Model Code of Judicial Conduct. *William and Mary Bill of Rights Journal, 15*(3), 1053-1085.

Casey, L. (2010). Diversity in state judicial campaigns, 2007-2008. Retrieved from http://www.followthemoney.org/press/ReportView.phtml?r=412&em=77

Caufield, R. P. (2005). In the wake of White: How states are responding to Republican Party of Minnesota v. White and how judicial elections are changing. *Akron Law Review, 38*, 625-647.

Caufield, R. P. (2007). The changing tone of judicial election campaigns as a result of White. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 34-58). New York: NYU Press.

Champagne, A. (2001). Interest groups and judicial elections. *Loyola of Los Angeles Law Review, 34*, 1391-1409.

Champagne, A. (2002a). Modern judicial campaigns. *Judges' Journal, 41*, 17-22, 45.

Champagne, A. (2002b). Television ads in judicial campaigns. *Ohio/Michigan/Alabama/Mississippi, 35*(3), 669-689.

Chemerinsky, E. (1998). Preserving an independent judiciary: The need for contribution and expenditure limits in judicial elections. *Chicago-Kent Law Review, 74*(1), 133-149.

Colman, P. L. (1993). Judicial impartiality and campaign speech: The constitutionality of Canon 7. *Saint Louis University Public Law Review, 12*, 209-224.

Croley, S. P. (1995). The majoirtarian difficulty: Elective judiciaries and the rule of law. *The University of Chicago Law Review, 62*(2), 689-794.

Denzin, N. M., & Lincoln, Y. S. (2000). *Handbook of qualitative research* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Dillman, D. A., Smyth, J. D., & Christian, L. M. (2009). *Internet, mail, and mixed-mode surveys: The tailored design method* (3rd ed.). Hoboken, New Jersey: John Wiley & Sons.

Dimino, M. R. (2005). The worst way of selecting judges—except all the others that have been tried. *Northern Kentucky Law Review, 32*(2), 267-304.

Dubois, P. L. (1979a). The significance of voting cues in state supreme court elections. *Law & Society Review, 13*(3), 757-779.

Dubois, P. L. (1979b). Voter turnout in state judicial elections: An analysis of the tail on the electoral kite. *Journal of Politics, 41*(3), 865-887.

Dubois, P. L. (1984). Voting cues in nonpartisan trial court elections: A multivariate assessment. *Law & Society Review, 18*(3), 395-436.

Dubois, P. L. (1986a). Financing trial court elections: Who contributes to California judicial campaigns? *Judicature, 70*, 8-16.

Dubois, P. L. (1986b). Penny for your thoughts? Campaign spending in California trial court elections, 1976–1982. *Western Political Quarterly, 39*(2), 265-284.

Eakins, K. R., & Swenson, K. (2007). An analysis of the states' responses to Repubclian Party of Minnesota v. White. *Justice System Journal, 28*(3), 371-384.

Eckley, T. S. (2008). Washington Committee for Ethical Judicial Campaigns. *Judicature, 92*(1), 43.

Eisenstein, J. (2000). Financing Pennsylvania's Supreme Court candidates. *Judicature, 84*(1), 10-19.

Epstein, L., Knight, J., & Martin, A. D. (2003). The norm of prior judicial experience and its consequences for career diversity on the U.S. Supreme Court. *California Law Review, 91*, 903-966.

Faucheux, P., & Herrnson, P.S. (1999). See how they run: State legislative candidates. *Campaigns & Elections, 20*(8), 21-26.

Foley, D. J. (1995). A case for better media coverage of judicial elections. *Newspaper Research Journal, 16*(3), 113-130.

Fortune, W., & White, P. J. (2008). Judicial campaign oversight committees' complaint handling in the 2006 elections: Survey and recommendations. *Judicature, 91*(5), 232-237.

Francia, P. L., & Herrnson, P. S. (2007). Keeping it professional: The influence of political consultants on candidate attitudes toward negative campaigning. *Politics & Policy, 35*(2), 246-272.

Frederick, B., & Streb, M. J. (2008). Women running for judge: The impact of sex on candidate success in state intermediate appellate court elections. *Social Science Quarterly, 89*(4), 937-954.

Gary, J. S. (1981). Ethical conduct in a judicial campaign: Is campaigning an ethical activity? *Washington Law Review, 57*, 119-138.

Gerbner, G., & Gross, L. (1976). Living with television: The violence profile. *Journal of Communication, 26*, 172-199.

Geyh, C. G. (2003). Why judicial elections stink. *Ohio State Law Journal, 64*, 43-79.

Gibson, J. L. (2008a). Campaigning for the bench: The corrosive effects of campaign speech? *Law & Society Review, 42*(4), 899-928.

Gibson, J. L. (2008b). Challenges to the impartiality of state supreme courts: Legitimacy theory and "new-style" judicial campaigns. *American Political Science Review, 102*(1), 59-75. doi: 10.1017/S0003055408080015

Gibson, J. L. (2009). "New-style" judicial campaigns and the legitimacy of state high courts. *The Journal of Politics, 71*(4), 1285-1304. doi: 10.1017/S0022381609990211

Gibson, J. L., & Caldeira, G. A. (2012). Campaign support, conflicts of interest, and judicial impartiality: Can recusals rescue the legitimacy of courts? *Journal of Politics, 74*(1), 18-34. doi: 10.1017/s0022381611001137

Gibson, J. L., Gottfried, J. A., Delli Carpini, M. X., & Jamieson, K. H. (2011). The effects of judicial campaign activity on the legitimacy of courts: A survey-based experiment. *Political Research Quarterly, 64*(3), 545-558. doi: 10.1177/1065912910370684

Glaser, B., & Strauss, A. (1967). *The discovery of grounded theory*. Chicago: Aldine.

Goldberg, D. (2003). Public funding of judicial elections: The roles of judges and the rules of campaign finance. *Ohio State Law Journal, 64*(1), 95-125.

Goldberger, D. (2003). The power of special interest groups to overwhelm judicial election campaigns: The troublesome interaction between the Code of Judicial Conduct, campaign finance laws, and the First Amendment. *University of Cincinnati Law Review, 72*(1), 1-43.

Grannis, M. A. (1987). Safeguarding the litigant's constitutional right to a fair and impartial forum: A due process approach to improprieties arising from judicial campaign contributions from lawyers. *Michigan Law Review, 86*, 382-419. doi: 10.2307/1288924

Haglund, D. (2012, September 20). *The West Wing* is still teaching people about democracy. *Browbeat*. Retrieved from http://www.slate.com

Hall, M. G. (1987). Constituent influence in state supreme courts: Conceptual notes and a case study. *The Journal of Politics, 49*(4), 1117-1124.

Hall, M. G. (1995). Justices as representatives: Elections and judicial politics in the American states. *American Politics Research, 23*, 485-503. doi: 10.1177/1532673X9502300407

Hall, M. G. (2001). State supreme courts in American democracy: Probing the myths of judicial reform. *American Political Science Review, 95*(2), 315-330.

Hall, M. G. (2007). Competition as accountability in state supreme court elections. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 165-185). New York: NYU Press.

Hall, W. K., & Aspin, L. T. (1987). The roll-off effect in judicial retention elections. *Social Science Journal, 24*(4), 415-427.

Hanssen, F. A. (1999). The effect of judicial institutions on uncertainty and the rate of litigation: The election versus appointment of state judges. *Journal of Legal Studies, 28*(1), 205-232.

Hanssen, F. A. (2004). Learning about judicial independence: Institutional change in the state courts. *Journal of Legal Studies, 33*(2), 431-473.

Heagarty, J. C. (2002). The changing face of judicial elections. *North Carolina State Bar Journal, 19,* 19-23.

Hendrickson, R. D., & Hale, F. D. (2004). Newspaper editorials counter unfair judicial campaign ads. *Newspaper Research Journal, 25*(3), 23-37.

Herrnson, P. S. (1994). Campaign communications. In P. S. Herrnson (Ed.), *Congressional elections: Campaigning at home and in washington* (5th ed., pp. 213-237). Washington, DC: CQ Press.

Hertog, J. K., & Human, J. (2008). *Candidate campaign experience and willingness to run again*. Paper presented at the 58th Annual International Communication Association Conference, Montreal, Quebec, Canada.

Hertog, J. K., Human, J., & Zuercher, R. (2011). *Recent campaign expereince and candidate willingness to run again*. Paper presented at the 69th Annual Midwest Political Science Association Conference, Chicago, IL.

Hertog, J. K., & Zuercher, R. (2012). *Candidate communications strategy and experience: An empirical assessment*. Paper presented at the 70th Annual Midwest Political Science Assocation Conference, Chicago, IL.

Hojnacki, M., & Baum, L. (1992a). Choosing judicial candidates: How voters explain their decisions. *Judicature, 75,* 300-309.

Hojnacki, M., & Baum, L. (1992b). `New-style' judicial campaigns and the voters: Economic issues and union members in Ohio. *Western Political Quarterly, 45*(4), 921-948.

Holder v. Hall et al, 512 U.S. 874 (1994).

Huber, G. A., & Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science, 48*(2), 247-263. doi: 10.1111/j.0092-5853.2004.00068.x

Illinois judges given campaigning tips. (1979). *American Bar Association Journal, 65*(10), 1461.

Ireland, R. M. (1995). The Green-Hargis affair: Judicial politics in ninteenth-century Kentucky. *Filson Club History Quarterly, 69*(4), 366-389.

Iyengar, S. (2002). The effects of media-based campaigns on candidate and voter behavior: Implications for judicial elections. *Indiana Law Review, 35*(3), 691-699.

Johnson, C. A., Shaefer, R. C., & McKnight, R. N. (1978). The salience of judicial candidates and elections. *Social Science Quarterly, 59*(2), 371-378.

Justice at Stake Campaign. (2001). Justice at Stake - State Judges Frequency Questionnaire. Retrieved from: http://www.justiceatstake.org/media/cms/JASJudgesSurveyResults_EA8838C0504A5.pdf

Kang, M. S., & Shepherd, J. M. (2011). The partisan price of justice: An empirical analysis of campaign contributions and judicial decisions. *New York University Law Review, 86*(1), 69-130.

Kiovsky, E. I. (1986). First Amendment rights of attorneys and judges in judicial election campaigns. *Ohio State Law Journal, 47*, 201-219.

Kritzer, H. M. (2007). Law is the mere continuation of politics by different means: American judicial selection in the twenty-first century. *DePaul Law Review, 56*, 423-467.

Layman, J. (2006). Judicial campaign speech regulation: Integrity or incentives? *Georgetown Journal of Legal Ethics, 19*(3), 769-780.

Lessig, L. (2006). *Code: And other laws of cyberspace, version 2.0*. New York, NY: Basic Books.

Lindlof, T. R., & Taylor, B. C. (2002). *Qualitative communication research methods* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Lindlof, T. R., & Taylor, B. C. (2011). *Qualitative communication research methods* (3rd ed.). Thousand Oaks, CA: Sage Publications.

Longan, P. E. (2005). Judicial professionalism in a new era of judicial selection. *Mercer Law Review, 56*, 913-947.

Lovrich, N. P., & Sheldon, C. H. (1983). Voters in contested, nonpartisan judicial elections: A responsible electorate or a problematic public? *Western Political Quarterly, 36*(2), 241-256.

Lovrich, N. P., Sheldon, C. H., & Wasmann, E. (1988). The racial factor in nonpartisan judicial elections: A research note. *Western Political Quarterly, 41*(4), 807-816.

Marbury v. Madison, 5 U.S. 137 (1803).

Matson, M., & Fine, T. S. (2006). Gender, ethnicity, and ballot information: Ballot cues in low-information elections. *State Politics & Policy Quarterly, 6*(1), 49-72.

Maykut, P., & Morehouse, R. (1994). *Beginning qualitative research: A philosophic and practical guide*. New York: RoutledgeFalmer.

McCall, M. (2003). The politics of judicial elections: The influence of campaign contributions on the voting patterns of Texas Supreme Court Justices, 1994-1997. *Politics & Policy, 31*, 314-343.

McDermott, M. L. (1997). Voting cues in low-information elections: Candidate gender as a social information variable. *American Journal of Political Science, 41*(1), 270-283.

McLeod, A. (2008). Bidding for justice: A case study about the effect of campaign contributions on judicial decision-making. *University of Detroit Mercy Law Review, 85*(3), 385-405.

Minzner, M. (1999). Gagged but not bound: The ineffectiveness of the rules governing judicial campaign speech. *UMKC Law Review, 68*(2), 209-237.

Mishler, W., & Sheehan, R. S. (1993). The Supreme Court as a countermajoritarian institution? The impact of public opinion. *American Political Science Review, 87*(1), 87-101.

Nicholson, M. A., & Nicholson, N. (1994). Funding judicial campaigns in Illinois. *Judicature, 77*, 294-299.

Nicholson, M. A., & Weiss, B. S. (1986). Funding judicial campaigns in the Circuit Court of Cook County. *Judicature, 70*, 17-25.

Ohio Elections Commission. (2005). History. Retrieved from http://elc.ohio.gov/History.stm

Peltz, J. (2012). For some consumers, surveys breed feedback fatigue, *The Associated Press Wire*. Retrieved from: http://www.ap.org/

Peters, C. S. (2009). Canons of ethics and accountability in state supreme court elections. *State Politics & Policy Quarterly, 9*(24), 24-55. doi: 10.1177/153244000900900102

Pozen, D. E. (2008). The irony of judicial elections. *Columbia Law Review, 108*(2), 265-330.

Reed, B. E. (2005). Tripping the rift: Navigating judicial speech fault lines in the post-White landscape. *Mercer Law Review, 56*, 971-1018.

Reid, T. V. (1999). The politicization of retention elections: Lessons from the defeat of Justices Lanphier and White. *Judicature, 83*(2), 68-77.

Reid, T. V. (2004). The competitiveness of female candidates in judicial elections: An analysis of the North Carolina trial court races. *Albany Law Review, 67*(3), 829-842.

Republican Party of Minnesota v. White, 536 U.S. 765 (2002).

Roberts, J. V., & Stalans, L. J. (1997). *Public opinion, crime, and criminal justice*. Boulder: Westview Press.

Roth, W. D., & Mehta, J. D. (2002). The Rashomon effect: Combining positivist and interpretivist approaches in the analysis of contested events. *Sociological Methods & Research, 31*, 131-173. doi: 10.1177/004912402237292s

Rottman, D. B. (2002). The White decision in the court of opinion: View of judges and the general public. *Court Review, 39*, 16-24.

Rottman, D. B., & Schotland, R. A. (2005). 2004 judicial elections. *Spectrum: Journal of State Government, 78*(1), 17-19.

Rowe, J. D. (1995). A constitutional alternative to the ABA's gag rules on judicial campaign speech. *Texas Law Review, 73*, 597-628.

Saldaña, J. (2009). *The coding manual for qualitative researchers*. Thousand Oaks, CA: Sage Publications.

Salokar, R. M. (2007). Endorsements in judicial campaigns: The ethics of messaging. *Justice System Journal, 28*(3), 342-357.

Sample, J., Skaggs, A., Blitzer, J., & Casey, L. (2010). The new politics of judicial elections 2000-2009: Decade of change. Retrieved from: http://www.justiceatstake.org/media/cms/JASNPJEDecadeONLINE_8E7FD3FEB83E3.pdf

Sanders, S. L. (1995). Kissing babies, shaking hands, and campaign contributions: is this the proper role for the Kansas judiciary? *Washburn Law Journal, 34*, 573-587.

Schaffner, B. F., & Diascro, J. S. (2007). Judicial elections in the news. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 115-139). New York: NYU Press.

Schotland, R. A. (1985). Elective judges' campaign financing: Are state judges' robes the emperor's clothes of American democracy? *Journal of Law & Politics, 2*(1), 57-167.

Schotland, R. A. (1998). Comment: Judicial independence and democratic accountability in highest state courts. *Law and Contemporary Problems, 61*(3), 149-155.

Schotland, R. A. (2002). Republican Party of Minnesota v. White: Should judges be more like politicians? *The Judges' Journal, 41*, 7-10, 45.

Schotland, R. A. (2007). New challenges to states' judicial selection. *The Georgetown Law Journal, 95*, 1077-1105.

Schultz, D. (2006). Minnesota Republican Party v. White and the future of state judicial selection. *Albany Law Review, 69*(4), 985-1011.

Siciliano, B. A. (1991). Attorney contributions in judicial campaigns: Creating the appearance of impropriety. *Hofstra Law Review, 20*, 217-243.

Skaggs, A., Silva, M. d., Casey, L., & Hall, C. (2011). The new politics of judicial elections 2009-10: How special interest "super spenders" thretened impartial justice and emboldened unprecented legislative atttacks on America's courts. Retrieved from: http://newpoliticsreport.org/content/uploads/JAS-NewPolitics2010-Online-Imaged.pdf

Snyder, L. B. (1987). The constitutionality and consequences of restrictions on campaign speech by candidates for judicial office. *UCLA Law Review, 35*, 207-263.

Sobocinski, R. A. (2006). Adumbrations on judicial campaign speech. *Idaho Law Review, 43*(1), 193-237.

Solimine, M. (2002). The false promise of judicial elections in Ohio. *Capital University Law Review, 30*, 559-581.

Spargo, T. J. (2005). A peripatetic view of judicial free speech. *Albany Law Review, 68*(3), 629-634.

Stern, N. (2008). The looming collapse of restrictions on judicial campaign speech. *Seton Hall Law Review, 38*(1), 63-135.

Stokes v. Fortson, 234 F. Supp 575 (1964).

Stott, D. K. (2009). Zero-sum judicial elections: Balancing free speech and impartiality through recusal reform. *Brigham Young University Law Review, 2009*(2), 481-512.

Streb, M. J. (2007a). Partisan involvement in partisan and nonpartisan trial court elections. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 96-114). New York: NYU Press.

Streb, M. J. (2007b). The study of judicial elections. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 1-14). New York: NYU Press.

Streb, M. J., & Frederick, B. (2007). Judicial reform and the future of judicial elections. In M. J. Streb (Ed.), *Running for judge: The rising political, financial, and legal stakes of judicial elections* (pp. 204-218). New York: NYU Press.

Streb, M. J., & Frederick, B. (2008). Conditions for competition in low-information judicial elections: The case of intermediate appellate court elections. *Political Research Quarterly, 62*(3), 523-537. doi: 10.1177/1065912908321698

Stromer-Galley, J. (2006). On-line interaction and why candidates avoid it. *Journal of Communication, 50*(4), 111-132. doi: 10.1111/j.1460-2466.2000.tb02865.x

Tashakkori, A., & Teddlie, C. (2003). *Handbook of mixed methods in social & behavioral research*. Thousand Oaks, CA: Sage Publications.

Thielemann, G. S. (1993). Local advantage in campaign financing: Friends, neighbors, and their money in Texas Supreme Court. *Journal of Politics, 55*(2), 472-478.

Tocqueville, A. (1969). *Democracy in America* (G. Lawrence, Trans.). Garden City, NY: Doubleday. (Original work published in 1835)

Traut, C. A., & Emmert, C. F. (1998). Expanding the integrated model of judicial decision making: The California Justices and capital. *Journal of Politics, 60*(4), 1166-1180.

Troutman, B. P. (2008). Party over? The politics of North Carolina's “nonpartisan” judicial elections. *North Carolina Law Review, 86*(6), 1762-1795.

Tyler, T. R. (1990). *Why people obey the law*. New Haven: Yale University Press.

Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology, 57*, 375-400.

Tyler, T. R., & Rasinski, K. (1991). Procedural justice, institutional legitimacy, and the acceptance of unpopular U.S. Supreme Court decisions: A reply to Gibson. *Law and Society Review, 25*, 621-630.

Volcansek, M. L. (1981). An exploration of the judicial election process. *Western Political Quarterly, 34*(4), 572-577.

Walsh, E. (2002, June 28). Curbs on judicial hopefuls lifted, *The Washington Post*, p. A10.

Ware, S. J. (1999). Money, politics and judicial decisions: A case study of arbitration law in Alabama. *Journal of Law & Politics, 15*(4), 645-686.

Weiss, J. C. (2006). Tough on crime: How campaigns for state judiciary violate criminal defendants' due process rights. *New York University Law Review, 81*(3), 1101-1136.

White, P. J. (2009). Using judicial performance evaluations to supplement inappropriate voter cues and enhance judicial legitimacy. *Missouri Law Review, 74*(3), 635-666.

Williams, M. (2007). Women's representation on state trial and appellate courts. *Social Science Quarterly, 88*(5), 1192-1204. doi: 10.1111/j.1540-6237.2007.00498.x

Appendix A: Gibson's Experiments

Experimental vignettes used by Gibson (2008b)

No commitment – no policy statement
Judge Anderson's campaign refuses to talk about issues of public policy, saying that a judge should not discuss issues that his court may have to decide some day. Instead, his television ads focus mainly on his qualifications to be a judge – things like what his background is and where he went to law school.

General policy – gives policy views
Judge Anderson's campaign broadcasts some ads on television which focus mainly on his views and positions on important legal issues like abortion, lawsuit abuse, and the use of the death penalty in Kentucky.

Specific case decisions – Promises to decide certain way
Judge Anderson's campaign broadcasts some ads on television which focus mainly on his views and positions on important legal issues like abortion, lawsuit abuse, and the use of the death penalty in Kentucky. He promises that, if re-elected, he will decide these kinds of cases in the way that most people in Kentucky want them decided.'

Selected questions asked by (Gibson, 2008a)

Next, I would like you to think about a lawsuit concerning whether a woman has the right to have an abortion. Imagine if you will that the judge deciding the case made some statements about abortion during his last election campaign – the one back in November. If the judge said during the campaign that 'I believe the constitution gives women the right to have abortions,' would you think that this alone would mean that the judge cannot be fair and impartial in deciding the case, or would you think that irrespective of the statement the judge could be fair and impartial?

If during the campaign the judge accepted campaign contributions from groups seeking to change Kentucky's law on abortion, ''Would you think that this alone would mean that the judge cannot be fair and impartial in deciding the case, or would you think that irrespective of the statement the judge could be fair and impartial?'' And what if the judge said during the campaign, ''If elected, I will change Kentucky's law on abortion?'' Would you think that this alone would mean that the judge cannot be fair and impartial in deciding the case, or would you think that irrespective of the statement the judge could be fair and impartial?

Appendix B: Survey Materials

E-mail Invitation

Dear candidate for public office:

My name is James K. Hertog. I'm an Associate Professor of Telecommunications at the University of Kentucky. I am contacting you concerning a study my students and I are conducting. We have developed a survey asking judicial candidates like yourself about your personal and professional experiences campaigning for public office and your evaluation of the campaign process. As a candidate, you are one of only a small number of people who can provide personal insight into what it is like to run for office, how you communicate with voters and how you evaluate the performance of media in covering campaigns.

This is not an issues questionnaire and you will not be asked your position on any controversial political issues.

Completion of the survey has averaged between 10 and 20 minutes, but could take longer depending on your responses. Your participation is entirely voluntary and you may quit at any time. Your answers will be entirely confidential unless you indicate that you are willing to share your identity with us. Also, you may request to be sent a summary of the study's results.

If you have any questions about the study you may contact me via e-mail at jim.hertog@uky.edu or phone me at 859-257-8204. I will be happy to respond to any questions or concerns in a timely manner.

If you have any questions about your rights as a volunteer in this research, please contact the Office of Research Integrity at the University of Kentucky at 859-257-9428 or call toll free at 1-866-400-9428.

The web address for the online survey follows. You may either click on the link below to be taken directly to the survey or else copy the address and paste it in your web browser (Internet Explorer, Mozilla Firefox, Apple Safari, etc.). The Candidate Campaign Experience survey address is:
Take the Survey

Or copy and paste the URL below into your internet browser:
https://uky.qualtrics.com/WRQualtricsSurveyEngine/?Q_SS=5vzVNf2b5PftuO9_e2vbP680oInjENL&_=1

Alternatively, we can mail you a physical copy of the survey with a postage-paid return envelope. If you would prefer a physical copy, please contact me with your preferred mailing address.

Thank you very much for any help you can provide to this important research.

Sincerely,
Dr. James K. Hertog
Associate Professor of Telecommunications
University of Kentucky
jim.hertog@uky.edu
office: 859-257-8204

E-Mail Reminder

Dear 2012 candidate for public office:

A little while ago we sent you a survey on behalf of the University of Kentucky. We asked for your experiences and perceptions as a judicial candidate. In case you were unable at that time to participate we are sending this message in hopes that you might now have some time to contribute to this important study. As a candidate, you are one of only a small number of people who can provide personal insight into what it is like to run for office, how you communicate with voters, and how you evaluate the performance of media in covering campaigns. It is for these reasons that we ask for your participation in this survey. This is the last time we will contact you regarding this opportunity to share your experiences and insights.

Completion of the survey has averaged between 10 and 20 minutes, but could take longer depending on your responses. Your participation is entirely voluntary and you may quit at any time. Your answers will be entirely confidential unless you indicate that you are willing to share your identity with us. Also, you may request to be sent a summary of the study's results. If you have any questions about the study you may contact me via e-mail at jim.hertog@uky.edu or phone me at 859-257-8204. I will be happy to respond to any questions or concerns in a timely manner.

If you have any questions about your rights as a volunteer in this research, please contact the Office of Research Integrity at the University of Kentucky at 859-257-9428 or call toll free at 1-866-400-9428.

The web address for the online survey follows. You may either click on the link below to be taken directly to the survey or else copy the address and paste it in your web browser (Internet Explorer, Mozilla Firefox, Apple Safari, etc.).

Follow this link to the Survey:
Take the Survey

Or copy and paste the URL below into your internet browser:
https://uky.qualtrics.com/WRQualtricsSurveyEngine/?Q_SS=5vzVNf2b5PftuO9_e2vbP680oInjENL&_=1

Alternatively, we can mail you a physical copy of the survey with a postage-paid return envelope. If you would prefer a physical copy, please contact me with your preferred mailing address.

Thank you very much for any help you can provide to this important research.

Sincerely,
Dr. James K. Hertog
Associate Professor of Media Studies, University of Kentucky
jim.hertog@uky.edu
office: 859-257-8204

Mail Cover Letter
Dear [candidate's name]:

My name is James K. Hertog. I am an Associate Professor of Media Studies at the University of Kentucky. My students and I are researching a set of critical issues for American representative democracy. We have developed a survey asking judicial candidates like yourself about your personal and professional experiences campaigning for public office and your evaluation of the campaign process. As a candidate, you are one of only a small number of people who can provide personal insight into what it is like to run for office, how you communicate with the electorate and how you evaluate the performance of media in covering campaigns. This address and many others were collected from lists of candidates maintained by Secretaries of State, Boards of Elections, and state bar associations. If you were not a judicial candidate during 2012, we apologize and ask that you disregard this message.

We ask that you complete our survey concerning your experiences during your most recent campaign. Completion of the survey has averaged between 10 and 20 minutes, but could take longer depending upon your responses. Your participation is entirely voluntary and you may quit at any time. Your answers will be entirely confidential unless you indicate that you are willing to share your identity with us. Also, you may request to be sent a summary of the study's results. If you have any questions about the study you may contact me via e-mail at jim.hertog@uky.edu or phone me at 859-519-0093. I will be happy to respond to any questions or concerns in a timely manner.

If you have any questions about your rights as a volunteer in this research, please contact the Office of Research Integrity at the University of Kentucky at 859-257-9428 or call toll free at 1-866-400-9428.

Along with the survey, we have included a postage-paid return envelope. Alternatively, you can complete the survey online. Please contact me via e-mail at jim.hertog@uky.edu if you prefer to complete the online survey.

Thank you very much for any help you can provide to this important research.

Sincerely,

Robert Zuercher	*on behalf of*	James K. Hertog
Doctoral Candidate		Associate Professor of Media Studies
University of Kentucky		University of Kentucky

Online Survey Welcome Screen

Hello. Welcome to the Judicial Candidate Survey website. This study is being conducted by Dr. James K. Hertog, Associate Professor at the University of Kentucky. If you have any questions or concerns about this research, please contact Dr. Hertog at jim.hertog@uky.edu or 859-257-8204.

You were contacted by e-mail because you were identified on your state's Secretary of State/Board of Elections website as being a candidate for judicial office at some point in time during 2012. If you were not a candidate during 2012, please do not complete the survey. If you have come to this website to complete the survey for a candidate, please ask the *actual candidate* to fill out the survey. The goal of this research is to understand the campaign experience from the perspective of someone who personally ran for public office during 2012.

Little research exists that asks candidates for public office about the campaign experience, their relations with the media, their attempts to communicate with the public, or their opinions about the conduct of electoral campaigns. Given the crucial role of elections in a representative democracy, such a lack of knowledge and understanding is of great concern. You, as a candidate for judicial office, have unique insight into these issues. Your knowledge and perspective on these crucial issues simply cannot be obtained from anyone else but you.

This is not an issues questionnaire and you will not be asked your position on any controversial political issues. We invite you to browse the contents of this survey before responding.

We greatly appreciate your willingness to provide your time and expertise to help us develop a better understanding of the campaign process and its effects on candidates.

To complete the survey:

There are two kinds of responses asked for on the following pages. For questions that allow you to choose from a set of responses, please simply click your mouse on the button next to the desired choice or choices. The button next to the response should fill in with black. When an open blank space or 'text field' is available, please type your answer into the space.

If you do not wish to answer a particular question, please leave it blank and go on to the next item.

If you prefer that the information you provide remain confidential, you will be able to indicate at the end of the survey that you wish your answers to be separated from any information that might identify you personally. Unless you specifically provide us with your permission, no results of this survey will ever be tied to you in any publication and no one but study personnel will have access to information that might connect your answers and your identity.

For those who are interested in the results of this study, we provide an opportunity at the end of the survey to request that they be sent a summary of our findings.

We have tried to limit the time necessary to complete the survey, and tests have indicated that it should average 10 to 20 minutes. It may take a bit longer, depending upon the specifics of your electoral campaign.

Thank you for your consideration.

Appendix C: Interview Materials

Interview E-Mail Invitation

Dear [candidate]:

Thank you for participating in our survey regarding judicial campaigns. Your responses are crucial for this important line of research. In order to expand upon and better interpret the information we have gained from the survey, a limited number of respondents will be re-contacted over the phone. Would you be willing to talk over the phone in order to enhance our understanding of your campaign experience? If so, **when would be a good time to contact you and at what number would be best to reach you**?

If you have any questions about the study you may contact me via e-mail at robert.zuercher@uky.edu or by phone at 270-302-6062. I will be happy to respond to any questions or concerns in a timely manner.

If you have any questions about your rights as a volunteer in this research, please contact the Office of Research Integrity at the University of Kentucky at 859-257-9428 or call toll free at 1-866-400-9428.

Thank you very much for any help you can provide to this important research.

Sincerely,

Robert "Bob" Zuercher
Doctoral Candidate
University of Kentucky
robert.zuercher@uky.edu
270-302-6062

Interview E-Mail Reminder

Dear [candidate]:

About a week ago, I sent you an e-mail to participate in an interview being conducted by researchers at the University of Kentucky. Would you be willing to talk over the phone in order to enhance our understanding of your campaign experience? If so, **when would be a good time to contact you and at what number would be best to reach you?**

If you have any questions about the study you may contact me via e-mail at robert.zuercher@uky.edu or by phone at 270-302-6062. I will be happy to respond to any questions or concerns in a timely manner.

If you have any questions about your rights as a volunteer in this research, please contact the Office of Research Integrity at the University of Kentucky at 859-257-9428 or call toll free at 1-866-400-9428.

Thank you very much for any help you can provide to this important research.

Sincerely,

Robert "Bob" Zuercher
Doctoral Candidate
University of Kentucky
robert.zuercher@uky.edu
270-302-6062

Informed Consent Script

This project is being conducted solely in the interests of our academic research at the University of Kentucky. The length of this interview will be approximately 30 minutes. If more time is needed to complete this interview, I will ask for your permission to talk again at another time. The purpose of this project is to increase our scholarly understanding of judicial campaigns, including candidates' campaign experiences, relations with the media, their attempts to communicate with the public, and opinions about the conduct of electoral campaigns. You will not get any personal benefit, rewards, or payment from taking part in the study. I am recording this conversation so that the information you provide can be analyzed at a later time. Your participation in the project is entirely voluntary, and you can stop the interview at any time. Will you allow me to quote directly from your comments in publications that will be written from the project? Will you allow me to attribute the quotes to you? If you do not wish for me to attribute them to you, please tell me and I will comply with your wishes. Before agreeing to participate in the study, do you have any questions for me? If you have questions for me after the interview, you may contact me by phone at 270-302-6062 or through my UK e-mail address, robert.zuercher@uky.edu. If you have questions for my institution, the University of Kentucky, about this research, you may call the Office of Research Integrity, (859) 257-9428, or toll-free at (866) 400-9428. Do you agree to participate?

Interview Guide

1. Could you tell me a little bit about the election you were involved in?
2. What was it like campaigning for office?

News Coverage

3. How important was the news media in your campaign?
4. Why do you believe your campaign received the type of coverage that it did?
5. How did you go about trying to generate news coverage?
6. How would you describe your relationship with the media?
7. Why do you think judicial campaigns and elections often receive less coverage than other contests?

Campaigning

8. How did you go about selecting what campaign communication methods you used?
9. How did you go about choosing what messages to emphasize in your campaign? Did you discuss any issue positions? Why did you choose to avoid/include issue positions?
10. In what ways were political parties active in the election? How do you feel about their involvement in judicial elections in general?
11. In what ways were interest groups active in the election? How do you feel about their involvement in judicial elections in general?
12. *Were you ever misrepresented or mischaracterized during the election? How did you respond?*
13. *What did including a paid campaign consultant/staff member add to your campaign?*
14. Looking back, is there anything you would have changed about your campaign? Is there anything you would have done differently?

Reform Proposals

15. How do you feel about the regulations that apply to judicial candidates?
16. Within the past decade, states have moved toward loosening the restrictions on judicial candidate speech. What do you feel the result of this has been? What do you see as the future for existing speech regulations?
17. How would you describe the current state of judicial selection in your state and why do you see it that way?
18. Could you describe any judicial election reforms that you strongly support or oppose? Why?

Consequences of Campaigning

19. What influenced the results of the election you were in?
20. What do you believe influenced voter knowledge concerning your candidacy?
21. What did you find most personally rewarding about running for office?
22. What would you say your campaign accomplished?
23. What did you find most difficult or upsetting about running for office?

Closing Question

24. Is there anything else you'd like to add about your experience campaigning?

Vita

Robert J. Zuercher
Birthplace: Eau Claire, Wisconsin

EDUCATION
University of Kentucky
Graduate Certificate in Applied Statistics. (2011). Department of Statistics.

M.A. (2009). Department of Communication.

B.S. (2007). Major in Telecommunications. Minor in Business. Honors Program.

PUBLICATIONS
Hertog, J.K. & Zuercher, R.J. (2014). Political communication in social transformation and revolutions. In Carsten Reinemann (Ed.), Political communication (pp. 167-207). Walter de Gruyter GmbH, Berlin/Boston.

Fallin, A., Zuercher, R.J., Rayens, M.K., Adkins, S., York, N., & Hahn, E.J. (2012). A short online community readiness survey for smoke-free policy. Nicotine & Tobacco Research. Advance online publication. doi: 10.1093/ntr/nts012.

PROFESSIONAL EXPERIENCE
Institutional Research Analyst Senior, University of Alabama, 2014-Present.

Institutional Research Analyst, University of Alabama, 2013-2014.

Teaching Assistant, University of Kentucky, 2008-2012.

Research Intern, Rural Smoke-Free Policies Communities Project, 2009-2011.

AWARDS
University of Kentucky
Graduate School Academic Year Fellowship Award, 2010, 2011, 2012.

Kentucky Opportunity Fellowship, 2009.

Daniel R. Reedy Quality Achievement Fellowship Award, 2007, 2008.

Otis T. Singletary Fellowship, 2007.